



Agenda

Land Use Management Committee

Notice is hereby given that a Land Use Management Committee of Council will be held at Council Chambers, 1 Belgrave Street, Manly, on:

Monday 2 July 2007

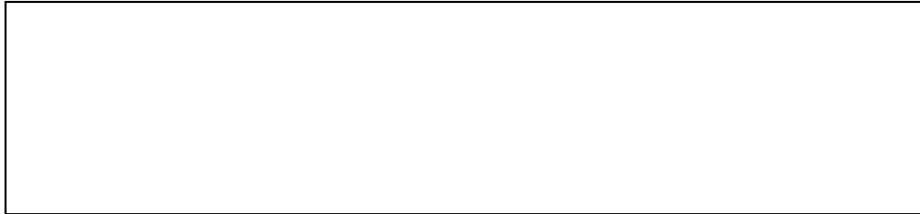
Commencing at 7:30pm for the purpose of considering items included on the Agenda.

Persons in the gallery are advised that the proceedings of the meeting are being taped for the purpose of ensuring the accuracy of the Minutes. However, under the Local Government Act 1993, no other tape recording is permitted without the authority of the Council or Committee. Tape recording includes a video camera and any electronic device capable of recording speech.

*Copies of business papers are available at the Customer Services Counter at Manly Council, Manly Library and Seaforth Library and are available on Council's website:
www.manly.nsw.gov.au*

Seating Arrangements for Meetings

Staff Staff General
 Manager Chairperson Staff Minute
 Taker



Mayor Dr Peter
Macdonald

Clr Mark Norek

Clr Joanna Evans

Clr Barbara Aird

Deputy Mayor

Clr Brad
Pedersen

Clr Richard
Morrison



Clr Jean Hay AM

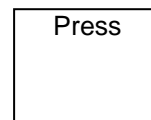
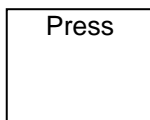
Clr Adele Heasman

Clr Dr Judy Lambert
AM

Clr Simon Cant

Clr David Murphy

Clr Pat Daley



Public
Addresses

Public Gallery

Chairperson: Cr Judy Lambert AM
Deputy Chairperson: Cr Jo Evans

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CONFIRMATION OF MINUTES

The Land Use Management Committee of Monday, 04 June 2007

PUBLIC ADDRESSES

SITE INSPECTIONS

The following site inspections will take place on Monday 2 July, 2007.

18/13 Victoria Parade, Manly	8:00am
270 Pittwater Road, Manly	8:30am
12 Smith Street, Manly	9:00am
87 Clontarf Street, Seaforth	9:30am
9 Jenner Street, Seaforth	10:00am
155A Seaforth Crescent, Seaforth	10:30am

ENVIRONMENTAL SERVICES DIVISION

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MATTERS OF URGENCY

(In accordance with Clause 241 of the Local Government (General) Regulations, 2005)

CLOSED COMMITTEE ITEMS

CONFIDENTIAL COMMITTEE OF THE WHOLE**Corporate Services Division Report No. 21**

Revocation of Approval to Use Footway for Outdoor Eating Purposes ("the Approval") *It is recommended that the Council resolve into closed session with the press and public excluded to allow consideration of this item, as provided for under Section 10A(2) (g) of the Local Government Act, 1993, on the grounds that the report contains advice concerning litigation, or advice that would otherwise be privileged from production in legal proceedings on the ground of legal professional privilege.*

******* END OF AGENDA *******

TO: Land Use Management Committee - 2 July 2007
REPORT: Environmental Services Division Report No. 39
SUBJECT: 18/13 Victoria Parade, Manly - DA168/07
FILE NO: DA168/07

Application Lodged: 18 May 2007
Applicant: A Thomas
Owner: Varixa Pty Ltd
Zoning: Manly Local Environmental Plan, 1988 - Business, within
 Foreshore Scenic Protection Area
Surrounding Development: 3 - 4 storey mixed development with ground floor business &
 upper level residential
Heritage: Nil

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT TO OCCUPY AN EXISTING OFFICE PREMISES TO BE USED FOR CONDUCTING MUSICAL TUITION BETWEEN 3:00PM - 8:00PM MONDAY - FRIDAY, 11:00AM - 5:00PM SATURDAY, CLOSED SUNDAY.
2. NOTIFICATION OF THE PROPOSAL RESULTED IN RECEIPT OF THIRTEEN (13) SUBMISSIONS PLUS TWO PETITIONS RAISING ISSUES OF NOISE IMPACTS TO NEIGHBOURING RESIDENTIAL UNITS AND BUSINESSES, OPERATING HOURS, INCREMENTAL NOISE INCREASE COMBINED WITH NOISE FROM NEIGHBOURING BUSINESSES, ENFORCEMENT OF NOISE CONTROLS, STRATA APPROVAL NOT BEING OBTAINED FOR LODGMENT, AND DISPUTED FLAWS OF THE ACOUSTIC ASSESSMENT.
3. SOUND TESTING WAS CARRIED OUT AS PART OF THE SITE INSPECTION TO ASSESS THE EFFECTIVENESS OF ACOUSTIC INSULATION MATERIAL AS INSTALLED BY THE APPLICANT. THIS CONCLUDED THAT MINIMAL SOUND IMPACTS WOULD RESULT TO COMMON AREAS AND ADJOINING RESIDENTIAL AND COMMERCIAL UNITS AS A RESULT OF MUSIC TUITION BEING CARRIED OUT.
4. THE APPLICATION WAS REPORTED TO COUNCILS DEVELOPMENT ASSESSMENT UNIT MEETING OF 21 JUNE 2007 WHERE IT WAS RECOMMENDED FOR APPROVAL SUBJECT TO CONDITIONS REQUIRING COMPLIANCE WITH RECOMMENDATIONS MADE IN THE APPLICANTS ACOUSTIC ENGINEER'S REPORT.
5. THE APPLICATION IS PRESENTED TO COUNCILS LAND USE MANAGEMENT COMMITTEE MEETING AT THE REQUEST OF COUNCILLOR HAY.
6. A SITE INSPECTION IS RECOMMENDED.
7. APPROVAL OF THE APPLICATION IS RECOMMENDED.

LOCALITY PLAN

Shaded area is subject site.



Environmental Services Division Report No. 39 (Cont'd)**REPORT****Introduction****Site Description**

The subject commercial apartment is located on the ground floor level within a mixed commercial and residential building located on the south west corner of the intersection of Darley Road and Victoria Parade.

Proposal

The application proposes use of the apartment for music tuition between the hours of 3:00pm to 8:00pm Monday to Friday and 11:00am to 5:00pm Saturday with no activity taking place on Sunday.

Applicant's Supporting Statement

The application to conduct musical tuition at the subject premises was accompanied by an Acoustic Engineer's Assessment, which included sound testing carried out within the subject building including the adjoining corridor and a residential unit located above (unit 3). The engineer's report concludes that the proposal is acceptable, causing minimal acoustic impacts to neighbouring premises subject to sound insulation material being installed within the subject premises.

Submissions

As noted thirteen (13) submissions were received from;

- S Grobbelaar (no address given),
- P Smith 11/13 Victoria Parade, Manly
- R Johansson 1/13 Victoria parade, Manly
- C Gracie 5/13 Victoria Parade, Manly
- C & N Bayfield 2/13 Victoria Parade, Manly
- Gilbey Burgess on behalf of Owners Corporation SP No.13941, PO Box 147 Manly 1655
- M Koeman 18/13 Victoria Parade, Manly
- M Preston, V Leary, M Clarke & M Cummins – Shops 3, 1, 2 and 5 & 6 respectively, PO Box 47 Manly 2095
- M Bevan 8/13 Victoria Parade,
- M Kerridge & Company on behalf of W Preston and The Holiday Centre Pty Ltd 13 Victoria Parade, Manly
- K Austin & D Stidolph 2/13 Victoria Parade, Manly
- S Tsuchida 10 Victoria Parade, Manly
- S Bridgeford 11 Victoria Parade, Manly
- V & N Caronna 9/13 Victoria Parade, Manly
- A Deheinzelin 5/13 Victoria Parade, Manly
- Dr B Macdonald 18/13 Victoria Parade, Manly
- A Samuels 4/11 Victoria Parade, Manly
- T & J Campbell 3/11 Victoria Parade. Manly
- Also a petition was also received with 30 signatures.

The submissions are from owners / occupants of the subject building and neighbouring buildings. Issues raised are addressed as follows:

Noise impacts to neighbouring residential units and businesses -

As noted, sound testing was carried out on site as part of this assessment. The acoustic engineer's assessment included testing through the ceiling from within a residential unit above,

Environmental Services Division Report No. 39 (Cont'd)

identified as unit 3. This has been verified by the tenants of unit 3, with their living room located directly above the southern side room of the subject premises (identified as 'studio 2'). Further testing during the site inspection involved adjusting a guitar amplifier and portable stereo to a loud volume whereby loud conversation within the premises could not be overheard.

With some sound insulation installed within the premises, the loudness of this music immediately outside the premises along the adjoining corridors was such that it was barely audible above the background noise of a café kitchen and exhaust fan. Furthermore, it could not be heard on the level above. Based upon these findings from the site inspection, the recommendations of the Acoustic Engineers Report are supported, with the acoustic insulation as installed clearly demonstrating their effectiveness in significantly reducing audible noise.

With respect to evening noise after 6:00pm, given that kitchen noise increases in the evening with the operation of the neighbouring Beaches Pizzeria, noise resulting from music tuition including electric guitar is unlikely to be audible. On this basis, noise impacts to neighbouring businesses and units are considered to be negligible. This is consistent with the conclusions of the Acoustic Engineer's Assessment, which supports the proposal subject to adequate noise insulation being installed within the premises.

Disputed flaws of acoustic engineers report

Several submissions from the owner of unit 2 claimed that sound testing was not carried out in unit 2 'as stated in the report'. In fact, the report refers to 'a residential unit' with its living room directly above the subject premises. This has since been confirmed as unit 3, with the tenants of unit 3 verifying that sound testing was carried out within their premises as detailed in the report.

Incremental noise increase combined with noise from neighbouring businesses

As discussed, the loudness of music being played at above shouting volume within the premises, as heard immediately outside the premises along the adjoining corridors was such that it was barely audible above the background noise of a café kitchen and exhaust fan. With these two separate noise sources being audible above the sound of amplified music from within the premises, they have the effect of setting the ambient background noise level. As a result noise from the musical tuition is not considered to result in any noticeable increase in the ambient background noise levels experienced in the building, and is therefore not likely to cause any noticeable increase in noise disturbances that may be experienced in the immediate surrounds.

Enforcement of noise controls

If development consent is granted, conditions of consent will be imposed and enforceable with respect to operational noise as set by EPA noise criteria, and operating hours. Given the business is considered unlikely to compare with noise levels associated with other night time businesses in the locality, noise resulting from its operation is unlikely to be an enforcement issue.

Operating hours

The proposed operating hours of 3:00pm – 8:00pm Monday - Friday, and 11:00am - 5:00pm Saturday is generally consistent with many other businesses in the locality (including larger more intensive noise generating businesses such as restaurants, cafes and bars) which trade for longer hours ranging from early in the morning to beyond 8:00pm daily. Given the premises are located within the business zone which encourages business activity, the proposed operating hours are considered acceptable and unlikely to affect the amenity of neighbouring residential units.

Environmental Services Division Report No. 39 (Cont'd)***Strata approval not being obtained for lodgment***

Legal advice received on this issue is that Body Corporate approval for a Development Application is required only where structural works to structural walls including common property is proposed. In this case no structural works are proposed with noise insulation measures within the subject premises not defined as structural works.

This advice is contained within the Court judgment *Owners Strata Plan No50411 & Ors v Cameron North Sydney 2003*, where the Court found that the owner of a strata premises is not obliged to obtain the consent of the body corporate to lodge a Development Application where the development is limited to within the premises. Given the proposal is restricted to wholly within the subject premises, approval to the lodge the Development Application was consequently not required from the Body Corporate that manages the premises.

Precinct Community Forum Comments

Due to the nature of the proposal, the application was not required to be referred to the Precinct.

Building Comments

Standard conditions of consent advised.

Planning Comments

The previous use of the premises was an office in which educational classes were conducted. In this regard the proposal seeks to retain the use of the premises as an educational establishment which is permissible with consent in the zone. The use is considered an acceptable use of the premises, which fitted with acoustic insulation, causes negligible amenity impacts to the business and residential surrounds. On this basis the proposal is considered suitable for the site and within the public interest, and is therefore recommended for approval.

Manly Local Environmental Plan 1988:

The proposal is defined as an "educational establishment" under the EP&A Model Provisions. The proposal is permissible with consent in the Business Zone. The proposal is also considered to be consistent with the relevant objectives of the zone, with the use considered compatible with the broad range of businesses in the locality. In this regard it does not result in any adverse impact to the streetscape, and is considered to result in minimal amounts of noise. The use is also comparable with the previous approved use as an office used for general educational purposes.

With respect to noise, sound testing on site combined with an acoustic engineer's report concludes that with sound insulation installed, the extent of audible sound resulting from musical tuition to neighbouring businesses and residential units will be minimal so as not to be clearly noticeable above ambient background noise.

Manly Local Environmental Plan 1988**Clause 10 Objectives**

The following comments are made in regard to the objectives for the Business Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

- (a) *to provide for and encourage the development and expansion of business activities which will contribute to the economic growth and employment opportunities within the Manly Council area;*

Environmental Services Division Report No. 39 (Cont'd)

The proposal is considered to be compatible with other businesses operating in the locality and its immediate surrounds. It will expand upon the range of educational services offered within the Manly Town Centre and has the potential to provide employment to a second music teacher.

(b) *to accommodate retail, commercial and professional services in established locations in the residential neighbourhoods where such development is compatible with the amenity of the surrounding areas;*

The proposal is considered to be compatible with the board range of businesses servicing the locality including bars, restaurants, cafes, takeaway food, general retail and offices in terms of hours of operation, noise generation and parking / traffic generation. Whilst located within a mixed use building with upper level residential units, the proposal is not considered to result in unreasonable noise disturbance when measured in context of noise from other businesses in its immediate surrounds.

(c) *to ensure there is adequate provision for car parking in future development in the business areas; and*

The proposal does not provide any on site parking which is the case for all ground floor businesses in the subject building. Given the limited tuition rate at no more than 4 students per hour in comparison with the neighbouring café and restaurant, the availability of street parking and that it is likely to service local residents, parking generation from the proposal is not considered to cause any adverse impacts on the local road network.

(d) *to minimise conflicts between pedestrians and vehicular movement systems within the business areas.*

The proposal is contained wholly within the subject premises and has access from the street via a common access corridor. Given the limited tuition rate no conflicts with nearby pedestrian or vehicle movement are anticipated.

Manly Development Control Plan for the Business Zone:

The proposed works are limited to non-structural internal alterations which have no impact on the streetscape of the Manly CBD.

In terms of parking and traffic generation, no parking spaces are provided on site which is a common outcome for most shops / offices in the locality. Given the intensity of use is comparable with other businesses in the locality, the proposal is not considered to result in excessive demands on public parking availability.

In terms of general amenity impacts, the proposed hours of operation are consistent with other businesses in the locality including numerous cafés and restaurants.

EP&AA 1979 – Section 79(C)

- (a) *the provisions of:*
- (i) *any environmental planning instrument*
 - (ii) *any draft environmental planning instrument*
 - (iii) *any development control plan*
 - (iv) *the regulations*

The Manly Local Environmental Plan 1988 and Manly Development Control Plan for the Business Zone Amendment 5 are the two relevant documents to this proposal and have been both addressed in this report.

Environmental Services Division Report No. 39 (Cont'd)

(b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

As discussed the proposed use of the premises for conducting musical tuition in two studios is not considered to result in any adverse amenity impacts particularly in terms of noise and hours of use, with these being compatible with neighbouring businesses. Consequently its impacts are considered negligible.

(c) *the suitability of the site for the development,*

No constraints are identified to use of the premises for musical tuition, with its suitability improved by way of installing acoustic insulation as recommended in the Acoustic Engineer's Report.

(d) *any submissions made in accordance with this Act or the regulations,*

These have been addressed in this report, with the proposal considered acceptable in response to issues identified in the neighbours submissions.

(e) *the public interest.*

The public interest is best served by permitting development that is consistent with the relevant planning controls and objectives. In these circumstances the proposal is considered an acceptable form of development that satisfies Council's LEP and DCP controls and objectives, consequently its approval is within the public interest.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Business Zone. The issue of potential noise impacts as raised in neighbours submissions is considered to have been appropriately addressed by way installing acoustic insulation as recommended in the Acoustic Engineers Report.

Compared with other business operations in the locality including cafes and restaurants which operate for longer hours and generate noise that is audible to the immediate residential surrounds, the proposal is considered less intense in its use and noise impacts. Consequently it is considered an acceptable use within the business zone and its mixed development context and is therefore recommended for approval.

RECOMMENDATION

That Development Application No. 168/07 for occupation of premises for conducting musical tuition at Unit 18 / 13 Victoria Parade, Manly be granted consent, subject to the following conditions;

DA1.

This approval relates to drawings/plans titled "Site Plan, Floor Plan, Location Plan - Suites 2 & 3 – 13 Victoria Parade" and document titled "Environmental Impact Statement" undated and received by Council 18 May 2007.

ANS01

Compliance with all the recommendations contained in Acoustic Engineers report by Acoustic Logic Consultancy dated 30 March 2007.

DA291

The hours of operation of the premises shall not exceed 3:00pm - 8:00pm Monday - Friday, and 11:00am - 5:00pm Saturday with no operation on Sunday **without the prior approval of Council.**

Environmental Services Division Report No. 39 (Cont'd)

DA292

Development consent of Council shall be obtained for any new advertising structure prior to erection.

DA293

No sandwich boards or the like are to be placed on Council's footpath.

DA323

This approval shall expire if the development hereby permitted is not commenced within 2 years of the date hereof or any extension of such period which Council may allow in writing on an application made before such an expiry.

ATTACHMENTS

There are no attachments for this report.

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***** End of Environmental Services Division Report No. 39 *****

TO: Land Use Management Committee - 2 July 2007
REPORT: Environmental Services Division Report No. 29
SUBJECT: 270 Pittwater Road, Manly - DA63/07
FILE NO: DA63/07

Application Lodged: 12 March 2007
Applicant: FPA International Architects
Owner: Manly Fishing and Sporting Association
Estimated Cost: \$20,000.00
Zoning: Manly Local Environmental Plan, 1988 - Residential
Surrounding Development: Residential Flat Buildings, townhouses and single dwellings
Heritage: Not Applicable

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR THE CONSTRUCTION OF AN EXTERNAL DECK ON LEVEL 1 AT THE REAR OF THE CLUB.
2. THE APPLICATION WAS NOTIFIED TO ALL ADJOINING PROPERTIES AND TWO (2) SUBMISSIONS RECEIVED.
3. THE APPLICATION WAS NOT REFERRED TO THE PRECINCT COMMITTEE AS THE PROPOSAL IS FOR WORKS TO THE REAR OF THE PROPERTY.
4. THE APPLICATION IS REPORTED TO COUNCIL AT THE REQUEST OF COUNCILLOR EVANS.
5. ON 1 JUNE 2007 COUNCIL AT ITS ORDINARY MEETING RESOLVED TO DEFER CONSIDERATION OF THE MATTER TO ALLOW SITE INSPECTION AND FURTHER CONSULTATION TO TAKE PLACE.
6. A SITE INSPECTION IS RECOMMENDED.
7. APPROVAL OF THE APPLICATION IS RECOMMENDED.

LOCALITY PLAN

Shaded area is subject site.



REPORT

Introduction

The proposal is for the construction of a timber deck measuring 3.0m x 7.0m on the northern side to the rear of the existing club building. To provide access to the deck the applicant proposes a door from the existing billiard room by converting a pair of existing windows. The proposal includes metal balustrades with glass infill panels and a 1800mm high louvred privacy screen to the eastern side of the balcony. The deck is to be used as a smoking area for members and patrons of the club in accordance with the Statutory requirements arising from changes in legislation due to take effect from July this year.

Environmental Services Division Report No. 29 (Cont'd)History

Council considered this application at its Ordinary Meeting of 18 June 2007 where it was resolved;

“That Development Application No.63/07 for a new first floor level deck at the rear of the existing club at No.270 Pittwater Road, Manly be deferred for a site inspection and to allow further consultation to take place for the following reasons;

The smoking balcony is close to residential development with noise, light, smoke drift and privacy impacts.”

It is noted that Council has received written confirmation from R Valla on behalf of Versoma Pty Ltd (one of the adjoining property owners originally objecting to the proposal) advising;

“I have reviewed the planning assessment and recommendation and we are satisfied that suitable mitigating provisions have been included in Council’s draft conditions of consent to protect the amenity of our clients property. On the basis that these conditions are supported by Council to be the final conditions to be applied to the application we will not be making any further representations to the Council meeting.”

Council is also in receipt of a letter from T Burns and Associates dated 18 June 2007 providing additional information in support of the proposal (see attachment).

Development Control Plan Numerical Assessment

The provisions of the DCP for the Residential Zone, 2001, Amendment 1 does not apply to this application. The use of a premise for the purpose of a club is prohibited under the Manly Local Environmental Plan 1988. The club is operating under “Existing Rights” provision of the Environmental Planning and Assessment Regulation 2000.

Applicant’s Supporting Statement

In support of the application, the applicant has submitted a Statement of Environmental Effects prepared by Natasha Harris, Consultant Planner. A copy of this statement is on file.

Submissions

In response to the notification, Council received two (2) submissions objecting to the development from:- J Hanrahan of 10a, Eurobin Avenue and R Vella of DEM Architects on behalf of Vesoma Pty Ltd (property owners of No. 8 Eurobin Avenue, Manly). Concerns raised include the following:-

- The Club and its Consultants have not consulted in any way with affected adjoining property owners in regards to the proposed location and likely impacts of the break out deck.
- The location of the proposed break out deck is inappropriate for this portion of the site and out of character with the surrounding predominantly residential neighbourhood.
- The proposed break out deck is located in close proximity to the main bedroom areas of our client’s property and other adjacent residential Housing Commission properties adjoining the Club site.
- The proposed deck will severely affect the bedrooms and rear yard areas to each of the 4 residential units within our client’s property and the amenity and privacy of other surrounding residential properties.
- The proposed deck is located in an exposed and elevated position without any noise or privacy screening to ameliorate noise, light spill and overlooking impacts created by the use of this area by Club patrons. The provision of a glazed balcony railing will do nothing to

Environmental Services Division Report No. 29 (Cont'd)

prevent noise spill, avoid overlooking and prevent night time light spill from adversely affecting our client's property and other adjoining residential properties.

- Patrons of the Club who smoke will utilise and congregate in this elevated and exposed area on a regular basis during Club's operating hours which extend to each day of the week and late at night on weekends.
- Detailed acoustic and lighting reports and a detailed sight line analysis to adjoining properties should be submitted.
- Applicant should consider a more suitable location preferably located off Pittwater Road frontage which will have less overlooking and impact on adjoining residential properties.
- We understand that the club site zoning is Residential and the Club currently operates on the site under existing use rights provisions. The provision of any expansion of the club's facilities particularly externally should be strictly regulated so that it does not impose further detrimental impacts on adjoining neighbouring residential properties.
- I already have problems with noise from this building at a number of times:
 1. Movement of bottles from inside to outside and then pick up. This typically occurs early morning from 3:00am to 10:00am and ad hoc through out the day.
 2. Noise from shows on Thursday, Friday and Saturday nights till midnight particularly when doors and windows are left open and when people are leaving at midnight.
 3. Noise from existing deck when door open.
 4. Noise from functions held in car park on weekends.

Precinct Community Forum Comments

The application was not referred to the Precinct Community forum as the proposal is minor and toward the rear of the site.

Engineers Comments

No objection subject to conditions contained within the Recommendation.

Building Comments

No objections to the new first floor deck at the rear of the subject property, subject to conditions contained within the Recommendation.

Planning Comments**Manly Local Environmental Plan 1988:**

The site is in zone No 2 – The Residential Zone under the Manly Local Environmental Plan 1988. Clubs, motels, hotels etc are prohibited within this zone. The existing Club in the zone is a non-conforming use. The current application relies on existing use rights provisions as described under Clause 106 – 108 of the Environmental Planning and Assessment Act 1979 and Clause 39 – 42 of the Environmental Planning and Assessment Regulation 2000.

Clause 41 of the Environmental Planning and Assessment Regulation 2000 states that an existing use may:

- (a) be enlarged, expanded or intensified, or
- (b) be altered or extended, or
- (c) be rebuilt, or
- (d) be changed to another use, including a use that would otherwise be prohibited under the Act.

The proposal is to erect a deck at the rear of the club for the purposes of an outdoor smoking area. This is considered to comply with the provisions of Clause 41 of the Regulations.

Environmental Services Division Report No. 29 (Cont'd)**Manly Local Environmental Plan 1988 Clause 10 Objectives**

The following comments are made in regard to the objectives for the Residential Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

(a) *to set aside land to be used for purposes of housing and associated facilities;*

The existing use of the site is a non-conforming use. The application relies on existing use provisions of the Act and Regulations.

(b) *to delineate, by means of development control in the supporting material, the nature and intended future of the residential areas within the Municipality;*

The provisions of the Development Control Plan for the Residential Zone, 2001, Amendment 1 is not applicable to this application.

(c) *to allow a variety of housing types while maintaining the existing character of residential areas throughout the Manly Council area;*

The subject site is used as a Club and therefore this clause does not apply to this application.

(d) *to ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residents or the existing quality of the environment;*

The proposed deck is proposed to the rear of the existing club and therefore would not have any adverse impact on the existing building form. However it is considered that the proposed deck would have some adverse impact on the amenity of the adjoining properties. It is therefore recommended that the deck be given conditional approval to negate the adverse impacts of the proposal.

(e) *to improve the quality of the residential areas by encouraging landscaping and permitting greater flexibility of design in both new development and renovations;*

There is no scope for additional landscaping as the rear of the club is fully covered in bitumen and is used for car parking associated with the club.

(f) *to allow development for purposes other than housing within the zone only if it is compatible with the character and amenity of the locality;*

The proposed deck is associated with the existing use of the club. The deck is to provide outdoor area for smokers in accordance with the statutory requirements arising from the changes in legislation due to take effect from July 2007. The proposed deck is considered to be compatible with the character and amenity of the locality, subject to conditions. The conditions being acoustic privacy screens to the north, east and west side of the balcony and restriction to the use of the balcony to no later than 10:30pm.

(g) *to ensure full and efficient use of existing social and physical infrastructure and the future provisions of service and facilities to meet any increased demand;*

The proposed development will not increase the demand on the existing social and physical infrastructure.

(h) *to encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

This clause is not applicable to this application as the existing use of the site is a club.

(i) *to encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination, and particularly in relation to the land to which Manly Local Environmental Plan 1988 (Amendment No 57) applies.*

This clause is not applicable to this application.

Environmental Services Division Report No. 29 (Cont'd)**Manly DCP for the Residential Zone 2001:**

The provisions of the Development Control Plan is not applicable as the proposal relies on the existing use of the site, which is a club.

Matters for consideration under Section 79C of the Environmental Planning & Assessment (EP&A) Act 1979:-

- (a) *the provisions of:*
- (i) *any environmental planning instrument*
 - (ii) *any draft environmental planning instrument*
 - (iii) *any development control plan*
 - (iv) *the regulations*

The application has been assessed under the provisions of Division 10 – Existing Use under the Environmental Planning and Assessment Act 1979 and Part 5 of the Environmental Planning and Assessment Regulation 2000.

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

It is considered that the development as proposed will have a detrimental impact on the adjoining properties in terms of noise, overlooking and privacy. The proposed development will overlook the rear yards of the adjoining properties and also increase the noise impact. Although the proposal is for an outdoor deck to provide an outdoor area for smokers, it could also become an area for patrons to congregate. It is therefore considered that the balcony should be provided with 1800mm high acoustic privacy screens which will maintain the amenity of the surrounding properties. It is also suggested that the use of the deck ceases at 10:30pm to provide quiet time for the surrounding residential properties.

- (c) *the suitability of the site for the development,*

The proposed development is suitable for the site, subject to conditions. However, ideally the best location for the balcony is towards the front along Pittwater Road. Site inspection revealed that a balcony located to the western side of the subject building is possible and this would create no adverse impact on the adjoining residential properties. This location would be accessible from the dining room via the existing door and therefore ideal for smokers and diners alike.

- (d) *any submissions made in accordance with this Act or the regulations,*

In response to notification of the application Council received two (2) submissions raising concerns in relation to privacy, overlooking and noise. These are discussed previously in this report.

- (e) *the public interest.*

The proposal, as conditioned, is acceptable in public interest terms.

Council Resolution 21 August, 2006.

Council at its Ordinary meeting 21 August, 2006 resolved as follows:

"1. That Council defer all DAs for Outdoor Smoking Areas in pubs and clubs and request that the applicant seek legal advice which would demonstrate if and how the proposed smoking area would comply with all the legal obligations applicable including but not limited to:

- a) Regulation prohibiting smoke drift from the smoking area.
- b) Occupation, Health and Safety regulations protecting staff working in smoking areas from SHS.

Environmental Services Division Report No. 29 (Cont'd)

- c) Commonwealth and NSW discrimination law relating to both employment and access of persons suffering from disabilities adversely affected by secondhand tobacco smoke.
2. That Council review it's current planning instruments in light of the proposed regulations due to be implemented in July 2007."

Council is yet to receive legal advice as referred to in item 1, however, draft conditions of consent are included in the Recommendation which require provision of self-closing doors between the interior of the club and the proposed deck and prevent service of food and beverages in the deck area.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979 and the Manly Local Environmental Plan 1988.

The application has also been assessed under the provisions of Clauses 106 – 109 – Existing Use provisions of the Environmental Planning and Assessment Act 1979 and Clauses 39 – 43 of the environmental Planning and Assessment Regulation 2000.

It is considered that upon receipt of satisfactory legal advice from the Applicant as detailed in item 1 above, the proposal can be approved subject to the provision of acoustic privacy screens and restricted hours of use.

RECOMMENDATION

That upon receipt of satisfactory legal advice referred to in Council's resolution of 21 August, 2006, Development Application No. 63/07 for a new first floor level deck at the rear of the existing club at 270, Pittwater Road, Manly be approved, subject to the following conditions:-

DA1

This approval relates to Drawing/Plan Nos. 607, DA 101A, 102A and 103A dated 1 March 2007 and received by Council on 12 March 2007.

ANS01

1800mm high acoustic privacy screens are to be provided to the northern, eastern and western side of the proposed balcony. This is to provide privacy, avoid overlooking and lessen the noise impact on to adjoining residential properties to the rear of the club. Details of the screens are to be provided to Council/Accredited Certifier prior to the issue of Construction Certificate.

ANS02

The balcony is not to be used after 10:30pm each night and the access doors to the balcony are to be kept locked after that time. This is to maintain the residential amenity of the area.

ANS03

Acoustic Privacy Screens are to be constructed of suitable glass panels either in a fully opaque finish or fitted with fixed solid louvre screens to prevent overlooking and light spill to the neighbouring properties. Screens and deck flooring must be constructed of suitable noise attenuating construction to ensure noise is contained and attenuated within the deck area and not transferred to neighbouring properties. In this regard an Acoustic Report prepared by a qualified Acoustic Consultant is to be submitted to Council/Accredited Certifier prior to the issue of Construction Certificate.

Environmental Services Division Report No. 29 (Cont'd)

ANS04

Any external lighting to the proposed deck is to be kept low level and below the height of the Acoustic Privacy Screens so as not to impact on the amenity of the residential neighbourhood.

ANS05

The external door accessing the deck area from the Club is to be an automatic self closing door. Windows to the deck area are to be fixed non operable windows. The door and windows to the deck are to be constructed of suitable acoustic glass and window / door frames are to be suitably noise attenuated to relevant Environmental Protection Authority guidelines.

ANS06

The use of the deck area is to be restricted to be used as a "Smokers area" only and provided with minimal seating with no service of food or beverages. This area is to be monitored regularly and managed by Club management and staff to ensure that patrons abide by the Club's restrictions of use of this area and to ensure noise levels are kept to a minimum at all times.

DA016

Pursuant to Section 97 of the Local Government Act, 1993, Council requires, prior to issue of the Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$600.00. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, at least 7 days prior to the commencement of any work on site.

Note: Where Council is not the principal certifying authority, refund of the trust fund deposit will also be dependant upon receipt of a final occupation certificate by the Principal Certifying Authority and infrastructure inspection by Council.

DA017

No obstruction shall be caused to pedestrian use of Council's footpath or vehicular use of any public roadway during construction.

DA342

Separate application shall be made to Council's Infrastructure Division for approval to complete, to Council's standards and specifications, works on Council property. This shall include vehicular crossings, footpaths, drainage works, kerb and guttering, brick paving, restorations and any miscellaneous works. Applications shall be made a minimum of twenty-eight (28) days prior to commencement of proposed works on Council's property. Applicant to notify Council at least 48 hrs before commencement of works to allow Council to supervise/inspect works.

DA018

Details of the builder's name and licence number contracted to undertake the works shall be provided to Council/Accredited Certifier prior to issue of the Construction Certificate.

DA021

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

DA023

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

Environmental Services Division Report No. 29 (Cont'd)

DA024

A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm. Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

DA39

Four (4) certified copies of the Structural Engineer's details in respect of all reinforced concrete, structural steel support construction and any proposed retaining walls shall be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

DA048

The implementation of adequate care during demolition/ excavation/ building/ construction to ensure that no damage is caused to any adjoining properties.

DA058

An adequate security fence is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

DA357

Four (4) copies of Architectural Drawings consistent with the development consent and associated specifications are to be submitted to Council/Accredited Certifier prior to the issue of the Construction Certificate.

DA065

All external cladding and trim of the approved building shall be of a non reflective nature (with reflectivity index of maximum 20%). Details of such finishes shall be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

DA109

All demolition is to be carried out in accordance with AS2601-2001.

DA111

Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.

DA119

A Fire Safety Schedule specifying the fire safety measures (both current and proposed) that should be implemented in the building premises shall be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000. Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.

DA121

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

DA230

No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.

DA255

Any ancillary light fittings fitted to the exterior of the building are to be shielded or mounted in a position to minimise glare to adjoining properties.

Environmental Services Division Report No. 29 (Cont'd)

DA261

A sediment/erosion control plan for the site shall be submitted for approval to the Council/Accredited Certifier prior to the issue of the Construction Certificate. Implementation of the scheme shall be completed prior to commencement of any works on the site and maintained until completion of the development.

DA267

Any future structures to be erected on the site shall be the subject of a Development Application and Construction Certificate Application.

DA269

A Construction Certificate Application is required to be submitted to and issued by the Council/Accredited Certifier prior to any building works being carried out on site.

DA270

Should you appoint Council as the Principal Certifying Authority (PCA) to undertake inspections during the course of construction then the following inspection/certification are required:

Silt control fences

Footing inspection - trench and steel

Framework inspection

Final inspection

The cost of these inspections by Council is \$920.00 (being \$230 per inspection inclusive of GST). Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$110.

DA271

An Occupation Certificate is to be issued by the Principal Certifying Authority prior to occupation of the development.

DA289

Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays. Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

DA323

This approval shall expire if the development hereby permitted is not commenced within 2 years of the date hereof or any extension of such period which Council may allow in writing on an application made before such an expiry.

Environmental Services Division Report No. 29 (Cont'd)

ATTACHMENTS

AT- 1 Applicants Response - Byrnes & Associates 1 Page

LUM020707ESD_1.doc

***** End of Environmental Services Division Report No. 29 *****

ATTACHMENT 1

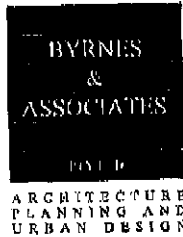
Environmental Services Division Report No. 29 - 270 Pittwater Road, Manly - DA63/07
Applicants Response - Byrnes & Associates

18/06/2007

14:06

BYRNES & ASSOCIATES PTY LTD → 99761400

NO. 937 001



18 June 2007
Ref: 60840c10

Mr Michael Regan
Manager, Specialist Services
Manly Council

By email: myda@manly.nsw.gov.au

Dear Michael

Re: DA 63/07 270 Pittwater Road

refer to your email dated 1 June 2007 in which you requested additional information, specifically how the proposed smoking area would comply with all the legal obligations applicable to regulations prohibiting smoke drift from the smoking area.

We note that this request arose as a result of a notice of motion from a Council meeting in which it was reported that

'Requests for "outdoor" smoking areas on rooftops, balconies and beer gardens are based on a flawed and unworkable regulation that defines an outdoor area as up to 75% enclosed.'

However, in this case the outdoor area is 100% open. It would have no roof and no enclosing walls.

As such any smoke would be quickly dissipated and would not be trapped or contained within an area.

In addition, as advised in the Statement of Environmental Effects, the door to the balcony will be automatically self-closing and the windows between the proposed balcony and the indoor areas of the club will be fixed closed. These requirements can be included as conditions of any consent granted.

As such there will be no smoke drift from the balcony to the indoor areas of the club.

Yours Faithfully

BYRNES AND ASSOCIATES

LEVEL 16 44 MARKET STREET SYDNEY 2000 ABN 38 056 751 350
TELEPHONE (61.2) 9299 2699 FACSIMILE (61.2) 9299 1221 EMAIL byrnes@byrnes.com.au

TO: Land Use Management Committee - 2 July 2007
REPORT: Environmental Services Division Report No. 44
SUBJECT: 12 Smith Street, Manly - DA499/06
FILE NO: DA499/06

Application Lodged: 6 November 2006 (Amended plans 8 May 2007)
Applicant: W & B Consulting Pty Ltd
Owner: C. Kennedy
Estimated Cost: \$80,000
Zoning: Manly Local Environmental Plan, 1988 - Residential
 Foreshore Scenic Protection Area: No
Surrounding Development: One and two storey residential development
Heritage: Pittwater Road Conservation Area

SUMMARY:

1. DEVELOPMENT APPROVAL IS SOUGHT FOR ALTERATIONS AND ADDITIONS TO AN EXISTING SEMI-DETACHED DWELLING AND NEW PERGOLA / CAR SPACE TO REAR.
2. THE APPLICATION WAS NOTIFIED TO NEIGHBOURING PROPERTIES AND ONE CONFIDENTIAL SUBMISSION WAS RECEIVED.
3. THE APPLICATION WAS NOT REFERRED TO THE OCEAN BEACH PRECINCT COMMUNITY FORUM AS THE PROPOSED WORKS ARE NOT VISIBLE FROM THE STREET FRONTAGE.
4. A NUMBER OF ISSUES WERE RAISED WITH THE APPLICANT ON 21 MARCH 2007 WHICH INCLUDED THE EXTENT OF WALLS ALONG THE BOUNDARY, PRIVACY, RETENTION OF CHIMNEYS AND DETAILS SHOWN ON THE PLANS.
5. AMENDED PLANS WERE RECEIVED ON 8 MAY 2007 AND NOTIFIED TO NEIGHBOURING PROPERTIES. ONE CONFIDENTIAL SUBMISSION WAS RECEIVED.
6. THE APPLICATION IS PRESENTED TO COUNCILS LAND USE MANAGEMENT COMMITTEE MEETING AT THE REQUEST OF THE GENERAL MANAGER.
7. A SITE INSPECTION IS RECOMMENDED.
8. THE APPLICATION IS RECOMMENDED FOR CONDITIONAL APPROVAL.

LOCALITY PLAN

Shaded area is subject site. (for LUM reports only – provided by Administration)



Environmental Services Division Report No. 44 (Cont'd)

REPORT

Introduction

The subject site is located on the eastern side of Smith Street and backs onto Smith Lane. The site is regular in shape with side boundaries measuring 30.48m and a frontage to Smith Street of 4.616m and a frontage to Smith Lane of 4.636m comprising a total site area of 139.1m². The site is legally described as Lot A in Deposited Plan 437840.

The site is currently development with a single storey dwelling which forms part of a series of four attached dwellings. The front façade remains largely intact from its construction c.1900. Adjoining the site to the north is a two storey dwelling house constructed in the late 1997. The subject site currently has no on-site car parking. The site is located within the Pittwater Road Conservation Area.

Development approval is sought for the following works:

- Demolition of some external walls on the northern (side) elevation, removal of existing concrete slab and paving to rear courtyard and removal of existing rear fence and gate;
- Reconfiguration of living / kitchen / laundry rooms by extending floor area to northern boundary in a staggered configuration and providing a northerly aspect to kitchen;
- Removal of rear chimney;
- Construction of a dormer window to storage loft;
- Installation of air conditioning unit on roof;
- Roller door and gate along rear lane;
- Car parking space to rear and timber pergola rafters to rear car parking space and courtyard.

Development Control Plan Numerical Assessment

The following is an assessment of the proposal's compliance with the numerical standards of the D.C.P. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Floor space ratio	0.6:1 max 83.5m ² (Based on minimum site area of 250m ² the permitted Floor Area is 150m ²)	0.79:1 110m ² (excess of 26.5m ²) DCP 2007 – 0.69:1 95.7m ²	No
Floor space ratio - existing	0.6:1	0.786:1 (109 m ²)	No
Wall height north side	6.5m	3m	Yes
Roof height	3m	<3m	Yes
Setback Front	Consistent with adjoining	2.7	Existing (consistent with adjoining)
Setback Rear	8.0m	6.3m	Existing
North setback side	1.0m	1.0m – 1.9m for length of 5.66m	Yes
South setback side	Adjoining semi	Nil	Yes
Wall on boundary height	3m	3m	Yes
Wall on boundary length	35% - 10.7m	41.6% - 12.7m	No

Environmental Services Division Report No. 44 (Cont'd)

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Open space - total	55%	12%	No (existing)
Open space - total	76.5m ²	17.5 m ² (min dimension of 2m)	No (existing)
Open space - soft	35% - 26.8m ²	14 ² m	No
Number of Endemic Trees	1	Nil	No - Limited capacity on small site
Private Open Space	18m ²	12.7m ²	No
Car Parking – Residents	2	1	No
Shadow -adjacent open space - adjoining EW orientation	Max 1/3 rd existing Min 2 hrs living room windows	<1/3 rd existing No change	Yes Yes

Applicant's Supporting Statement

The applicant submitted a Statement of Environmental Effects and this is on file.

Submissions

The original and amended applications were notified in accordance with Council Notification DCP and one (1) confidential submission was received. The matters raised have been taken into consideration in the assessment of the application.

Precinct Community Forum Comments

The application was not referred to the relevant Precinct community forum as the proposed works were not visible from the Smith Street.

Engineers Comments

No objection subject to conditions.

Building Comments

No objections subject to conditions.

Heritage Comments

A Heritage impact statement was not submitted or addressed in the Statement of Environmental Effects. Little information was provided on the internal work to the original cottage- all work should address heritage impact as the property is in a conservation area. Information should have been provided that included details of the "existing" storage area as presented there is no impact on streetscape of Smith Street. However it is recommended that both chimneys are retained even if their function is not required.

Environmental Services Division Report No. 44 (Cont'd)**Heritage Committee DA Sub Committee Comments**

1. Insufficient documentation has been provided to ascertain the fabric proposed to be removed (e.g. chimney).
2. Retention of existing chimneys/fireplaces is supported for heritage reasons and as a positive contribution to sustainability (e.g. ventilation).
3. No assessment of heritage significance or history has been provided.

Planning Comments**Manly Local Environmental Plan 1988:**

The site is in zone No 2 – The Residential Zone which permits dwelling houses with the consent of Council. The alterations and additions and the car space are ancillary to the dwelling and permissible with consent in the zone.

Manly Local Environmental Plan 1988 Clause 10 Objectives

The following comments are made in regard to the objectives for the Residential Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

(a) *to set aside land to be used for purposes of housing and associated facilities;*

The site maintains its residential use.

(b) *to delineate, by means of development control in the supporting material, the nature and intended future of the residential areas within the Municipality;*

The Manly Development Control Plan for the Residential Zone 2001 has been considered in the assessment of the application.

(c) *to allow a variety of housing types while maintaining the existing character of residential areas throughout the Manly Council area;*

The streetscape character remains unchanged consistent with this objective.

(d) *to ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residents or the existing quality of the environment;*

Subject to recommended conditions, neighbouring amenity is preserved.

(e) *to improve the quality of the residential areas by encouraging landscaping and permitting greater flexibility of design in both new development and renovations;*

The design provides for a more functional area of open space for the occupants of the dwelling and provides some capacity for the infiltration of stormwater on site by the use of pervious paving material to the rear.

(f) *to allow development for purposes other than housing within the zone only if it is compatible with the character and amenity of the locality;*

Not applicable.

(g) *to ensure full and efficient use of existing social and physical infrastructure and the future provisions of service and facilities to meet any increased demand;*

There is no increased demand for services and facilities.

(h) *to encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

The proposed development is considered to be suitable development subject to the recommended conditions.

Environmental Services Division Report No. 44 (Cont'd)

- (i) *to encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination, and particularly in relation to the land to which Manly Local Environmental Plan 1988 (Amendment No 57) applies.*

Not applicable.

Clause 21 - Conservation Area

The application was referred to Council's Heritage Advisor and the DA Sub-Committee of the Heritage Committee. Although a detailed Heritage Impact Statement was not supplied, Council's Heritage Advisor concluded that there is no impact on the streetscape of Smith Street. However, it was recommended that both chimneys be retained even if their function is not required. This recommendation was put to the applicant and in reply they pointed to the fact that 12 Smith Street forms part of a row of four semidetached dwellings and the adjoining dwellings, numbers 8 and 10 Smith Street, have had the rear chimneys removed in order to allow a functional internal space within the rooms of the additions. Furthermore, that the property has two existing chimneys, one visible from Smith Street the other only visible from Smith Lane. The chimney visible from Smith Street is to remain to ensure that the streetscape is maintained. Considering the rear chimney is not currently functioning, the locality and the fact that the chimney visible from Smith Street is to remain, no objection is raised to the removal of the rear chimney in the current proposal.

Manly DCP for the Residential Zone 2001 (and Residential DCP 2007 where relevant):

An examination of the above compliance table reveals a number of non-compliances with the numerical requirements of the DCP. Most notable among these are the variances to the density, FSR, length of wall along the boundary and open space requirements.

It should be noted at the outset that the narrowness of the allotment severely hinders the development of the site in strict accordance with the DCP numerical requirements. In combination with the configuration of the existing allotment, the locality is typified by 'close quarters' living with dwellings having limited side setbacks (if at all) and a street massing which displays a predominance of built form over landscaping / void. It is in this context that the proposed application and potential amenity impacts arising from the development should be viewed.

Building Envelope

Section 3.3.2 (b) of the DCP states:

On sites which are substantially less (20%) than the minimum site area required in the relevant density sub-zone, Council may consider a variation to the floor space ratio provided the applicant can demonstrate the objectives of the DCP can be achieved.

Density sub-zone 3 requires a minimum site area per dwelling of 250m². The existing allotment is only 139m². Therefore, the existing allotment is substantially less than (> 20%) than the minimum site area required and it is appropriate to allow a dispensation on the proposed FSR provided it can be demonstrated that the objectives of the DCP can be met. The variation to the FSR requirement of the DCP is supported in the context of the objectives for the following reasons:

- There will be no discernable change to the bulk of the dwelling when viewed from Smith Street and the minor increase in the floor area of the dwelling creates no unreasonable visual bulk issues on adjoining sites;
- The additions will not obscure any important landscape features;
- The siting of the proposed additions is generally consistent with the established built form in the immediate locality;
- Subject to the recommended conditions there is not anticipated to be any unreasonable amenity impacts experienced on adjoining sites such as view loss, loss of privacy, loss of sunlight or noise (consistent with close quarters residential living);

Environmental Services Division Report No. 44 (Cont'd)

- The alterations to the living room and kitchen will improve the sunlight access to these areas, generally improve the level of privacy between adjoining sites and due to the orientation of the allotment will not impact upon the level of sunlight available to private open spaces and to habitable rooms of adjacent dwellings.

The proposal also fails to comply with Section 3.5.2(d) of the DCP which seek to limit the extent of walls on the boundary. The offending length of wall along the northern boundary is 2.0m over that permitted by the DCP. The DCP permits walls to be built to side boundaries (in accordance with Table 5 detailed on page 31) providing the applicant can demonstrate no disadvantage to the adjacent allotment through increased overshadowing, or loss of view and no impediment to property maintenance. The 4.7m long section of the proposed living room wall which is to be constructed on the boundary abutting the existing wall on the boundary on the adjoining site. Accordingly, no objection is raised to this portion of the proposed boundary wall considering it will have no impact on the adjoining site.

Car parking / Open space

In an attempt to gain some on-site car parking, the addition of the car space reduces the availability of open space on site. However, it is envisaged that this area could have a dual function either providing car parking or open space for the occupants. The removal of the concrete slab in the existing rear yard and the replacement with a pervious paving system ensures that the level of nominal soft open space is marginally increased. Accordingly, subject to the use of a pervious material on the hard stand area the proposal strikes an acceptable balance between the competing objectives of providing sufficient open space on site and the provision of on-site car parking. Although the open space requirements do not satisfy the DCP controls, no objection is raised due to the undersized allotment.

There is no consistent design and height of garage doors, walls and fences along Smith Lane. Accordingly, no objection is raised to the garage door and entry gate along the rear lane. This scale and design is consistent with the neighbouring property.

Although it is noted on the plans that the pergola covering the car space is to be open, a condition is recommended to ensure that the pergola is not enclosed with a roof in order to preserve the amenity of the site.

Privacy

The existing living and kitchen windows are orientated towards the boundary. The proposed kitchen and living room windows are located both perpendiculars to and towards the boundary, although the kitchen windows are now setback a greater distance from the side boundary.

The increased setback of the kitchen windows will assist in the provision of privacy between the site and the adjoining site and the staggering of the living room windows to the boundary will also mitigate any perceived privacy concerns. The Manly DCP for the Residential Zone 2007 seeks to provide a 3m setback between the boundary and living room windows. However, the narrowness of the allotment prevents this setback being achieved. Accordingly, it is recommended that fixed louvres or highlight windows be provided to the north facing windows of the proposed living area to assist in the provision of privacy. A condition along these lines is recommended.

The provision of a small paved courtyard adjacent to the proposed kitchen is unlikely to generate unreasonable aural privacy concerns for neighbouring dwellings when considered in the context of the close quarters living arrangements that are the feature of the locality.

Lastly, attention is turned to the proposed loft storage area and the addition of a dormer window. This area is only accessible via a pull down ladder and nominated as storage space on the submitted plans. It is unlikely that this room will be extensively used given it is nominated as a

Environmental Services Division Report No. 44 (Cont'd)

storage room and is not accessible via a conventional stair well, therefore this room is unlikely to generate unreasonable privacy concerns on adjoining sites. The applicant has nominated that the dormer window will be fitted with obscure narrow louvres to alleviate any perceived concerns. A condition along these lines is recommended.

EP&AA 1979 – Section 79(C)

- (a) *the provisions of:*
- (i) *any environmental planning instrument*
 - (ii) *any draft environmental planning instrument*
 - (iii) *any development control plan*
 - (iv) *the regulations*

The proposal has been assessed against the relevant provisions of the Manly Local Environment Plan 1998 and the Manly Development Control Plan for the Residential Zone 2001 and the Manly Development Control Plan for the Residential Zone 2007. Subject to the recommended conditions the application is considered to be generally consistent with the objectives of the controls detailed in these documents.

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

The likely impacts of the development have been considered. Privacy impacts can be effectively mitigated through appropriate conditions and there is no unreasonable noise issue anticipated in the context of the close quarters living. The relocation of the air conditioning unit from below eave level to the roof forms part of the application. It is recommended that a condition be placed on any consent requesting the relocation of the unit away from all property boundaries to reduce noise impacts on adjoining sites.

- (c) *the suitability of the site for the development,*

The proposal is relatively minor in its scope. The development provides important on-site car parking and improves the functionality of the exiting living areas of the dwelling. Subject to the recommended conditions the proposal represents suitable development.

- (d) *any submissions made in accordance with this Act or the regulations,*

The concerns raised in the confidential submission have been taken into consideration in the assessment of the application. The concerns included overlooking, noise and general amenity issues associated with walls, the pergola and fences.

- (e) *the public interest.*

Subject to the recommended conditions the proposal is considered to be in the public interest.

CONCLUSION:

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2001 (Amendment 1) and 2007. From this assessment the application is recommended for conditional approval.

Environmental Services Division Report No. 44 (Cont'd)**RECOMMENDATION**

That Development Application No. 499/06 for Alterations and additions to an exiting semi-detached dwelling and new pergola / car space to rear at 12 Smith Street, Manly be Approved subject to the following conditions:

ANS01

The two (2) north facing living room windows are to be fitted with fixed external louvres or modified to be highlight windows with a minimum sill height of 1600mm to assist in the provision of privacy between the subject site and the adjoining site. Plans are to be amended and submitted to Council/ Accredited Certifier prior to the issue of the Construction Certificate.

ANS02

Fixed, opaque louvers are to be fitted to the dormer window associated with the loft storage area. Details of the louvers are to be submitted to Council / Accredited Certifier and plans amended accordingly prior to the issue of the Construction Certificate.

ANS03

The pergola in the rear yard is not to be enclosed without the prior approval of Council.

ANS04

The air conditioning unit is to be relocated to a central location on site away from property boundaries (not on the roof). The amended location of the air conditioning unit is to be shown on the plans prior to issue of the Construction Certificate.

DA009

The construction of a vehicular footpath crossing is required. The design and construction including allowable width shall be in accordance with the current Policy of Council and Specification for the Construction of Vehicle Crossings. All works shall be carried out prior to the issue of Occupation Certificate.

DA010

Separate application to Council for the construction of a Vehicular Crossing for the design, specification and inspection by Council. The design and construction including allowable width shall be in accordance with the current Policy of Council and Specification for the Construction of Vehicle Crossings. Applications shall be made a minimum of twenty-eight (28) days prior to commencement of proposed works on Council's property.

DA011

All surplus vehicular crossings and/or kerb laybacks shall be removed and the kerb and nature strip reinstated prior to issue of the Occupation Certificate.

DA012

The driveway/access ramp grades, access and car parking facilities shall comply with the Australian Standard for Off-Street Parking AS2890.1-2004 or later editions.

DA016

Pursuant to Section 97 of the Local Government Act, 1993, Council requires, prior to issue of the Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$2200. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, at least 7 days prior to the commencement of any work on site.

Environmental Services Division Report No. 44 (Cont'd)

Note: Where Council is not the principal certifying authority, refund of the trust fund deposit will also be dependant upon receipt of a final occupation certificate by the Principal Certifying Authority and infrastructure inspection by Council.

DA017

No obstruction shall be caused to pedestrian use of Council's footpath or vehicular use of any public roadway during construction.

DA341

Any heritage listed stone kerb removed for construction of a driveway or other approved works, is to be removed without damaging it and contact is to be made with Councils Works Manager on Telephone 9976 1455 for the stone to be transported to Councils Depot.

DA342

Separate application shall be made to Council's Infrastructure Division for approval to complete, to Council's standards and specifications, works on Council property. This shall include vehicular crossings, footpaths, drainage works, kerb and guttering, brick paving, restorations and any miscellaneous works. Applications shall be made a minimum of twenty-eight (28) days prior to commencement of proposed works on Council's property. Applicant to notify Council at least 48 hrs before commencement of works to allow Council to supervise/inspect works.

DA343

Any adjustment to the public utility service is to be carried out in compliance with their standards and the full cost is to be borne by the applicant.

DA018

Details of the builder's name and licence number contracted to undertake the works shall be provided to Council/Accredited Certifier prior to issue of the Construction Certificate.

DA019

Insurance must be undertaken with the contracted builder in accordance with the Home Building Act, 1997. Evidence of Insurance together with the contracted builders name and licence number must be submitted to Council /Accredited Certifier prior to issue of the Construction Certificate.

DA021

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

DA023

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

DA024

A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm. Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

DA026

All construction works shall be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans with certification being submitted to the Principal Certifying Authority during construction from a registered surveyor certifying ground and finished ridge levels.

Environmental Services Division Report No. 44 (Cont'd)

DA031

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

DA039

Four (4) certified copies of the Structural Engineer's details in respect of all reinforced concrete, structural steel support construction and any proposed retaining walls shall be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

DA040

Where any excavation extends below the level of the base of the footing of a building on an adjoining allotment of land, the person causing the excavation shall support the neighbouring building in accordance with the requirements of the Building Code of Australia.

DA044

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.

DA045

All materials and finishes of the proposed additions are to match, as closely as possible the material and finish of the existing building.

DA048

The implementation of adequate care during demolition/ excavation/ building/ construction to ensure that no damage is caused to any adjoining properties.

DA058

An adequate security fence, is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

DA357

Four (4) copies of Architectural Drawings consistent with the development consent and associated specifications are to be submitted to Council/Accredited Certifier prior to the issue of the Construction Certificate.

DA109

All demolition is to be carried out in accordance with AS2601-2001.

DA111

Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.

DA094

Stormwater drainage from the proposed addition/extension shall be disposed of to the existing drainage system. All work shall be carried out in accordance with Council standards and specifications for stormwater drainage. Work shall be completed prior to the issue of the Occupation Certificate.

Environmental Services Division Report No. 44 (Cont'd)

DA121

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

DA126

An automatic fire detection and alarm system shall be installed in the proposed dwelling in accordance with the requirements of Part 3.7.2 of the Building Code of Australia 1996 - Housing Provisions.

DA230

No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.

DA255

Any ancillary light fittings fitted to the exterior of the building are to be shielded or mounted in a position to minimise glare to adjoining properties.

DA261

A sediment/erosion control plan for the site shall be submitted for approval to the Council/Accredited Certifier prior to the issue of the Construction Certificate. Implementation of the scheme shall be completed prior to commencement of any works on the site and maintained until completion of the development.

DA269

A Construction Certificate Application is required to be submitted to and issued by the Council/Accredited Certifier prior to any building works being carried out on site.

DA270

Should you appoint Council as the Principal Certifying Authority (PCA) to undertake inspections during the course of construction then the following inspection/certification are required:

Silt control fences

Footing inspection - trench and steel

Framework inspection

Wet area moisture barrier

Drainage inspection

Final inspection

The cost of these inspections by Council is \$1380. (being \$230 per inspection inclusive of GST). Payment of the above amount is required prior to the first inspection. Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$110.

DA271

An Occupation Certificate is to be issued by the Principal Certifying Authority prior to occupation of the development.

DA285

Roof and framing including provision for tie downs, bracing and fixings are to be designed by a practising Structural Engineer. The Engineer is to specify appropriate wind category relating to the site terrain, house design and height of the structure, with details being submitted to the Principal Certifying Authority prior to the commencement of framework.

Environmental Services Division Report No. 44 (Cont'd)

DA332

The capacity and effectiveness of erosion and sediment control devices must be maintained to Council satisfaction at all times.

DA337

Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.

DA340

The applicant and/or builder must prior to the commencement of work, install at the periphery of the site, measures to control sedimentation and the possible erosion of the land. The measures must include:-

- (i) siltation fencing;
- (ii) protection of the public stormwater system; and
- (iii) site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

DA289

Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays. Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

DA319

Details of the method of termite protection which will provide whole of building protection, inclusive of structural and nonstructural elements, shall be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate. Attention is drawn to the provisions of Australian Standard 3660.1 "Protection of Buildings from Subterranean Termites New Buildings" and to Council's Code for the "Protection of Buildings Against Termite Attack".

DA320

Prior to issue of the Occupation Certificate, a durable termite protection notice shall be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with Council's Code for the "Protection of Buildings Against Termite Attack".

DA274

Payment of contributions in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979, may be required for this development. If required the amount will be in accordance with Council's Section 94 Policy applicable at the time of payment prior to the issue of the Construction Certificate.

DA323

This approval shall expire if the development hereby permitted is not commenced within 2 years of the date hereof or any extension of such period which Council may allow in writing on an application made before such an expiry.

Environmental Services Division Report No. 44 (Cont'd)

ATTACHMENTS

There are no attachments for this report.

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***** End of Environmental Services Division Report No. 44 *****

TO: Land Use Management Committee - 2 July 2007
REPORT: Environmental Services Division Report No. 40
SUBJECT: 87 Clontarf Street, Seaforth - DA477/06
FILE NO: DA477/06

Application Lodged: 13 September 2006
Applicant: Greenfield DA Services
Owner: Henning and Tatiana Muller
Estimated Cost: \$217,000
Zoning: Manly Local Environmental Plan, 1988 - Residential
 Manly Residential Development Control Plan 2001,
 Amendment 1 Sub Zone: 5
 Within the Foreshore protection Area: No
Surrounding Development: Residential
Heritage: N/A

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR DEMOLITION OF THE EXISTING DWELLING, CONSTRUCTION OF A NEW TWO-STOREY DWELLING AND DECK; REMOVAL OF EXISTING DRIVEWAY/CROSSOVER AND CONSTRUCTION OF NEW; AND REMOVAL OF THREE TREES.
2. THE PROPOSAL WAS NOTIFIED TO NEARBY AND ADJOINING PROPERTY OWNERS WITH ONE SUBMISSION RECEIVED.
3. THE APPLICATION WAS REFERRED TO SEAFORTH NORTH PRECINCT COMMUNITY FORUM AND COMMENTS WERE RECEIVED.
4. AMENDED PLANS WERE RECEIVED ON 7 MARCH 2007 AND WERE NOTIFIED TO NEARBY AND ADJOINING PROPERTY OWNERS WITH ONE SUBMISSION RECEIVED.
5. THE APPLICATION IS PRESENTED TO COUNCIL AT THE REQUEST OF COUNCILLOR MACDONALD.
6. A SITE INSPECTION IS RECOMMENDED.
7. DEFERRED COMMENCEMENT CONSENT IS RECOMMENDED.

LOCALITY PLAN

Shaded area is subject site.



REPORT

Introduction

Site Analysis:

The site is located on the western side of Clontarf Street. The site has an east-west orientation and is legally described as Lot 170A, DP 399898.

Environmental Services Division Report No. 40 (Cont'd)

The site slopes from the middle of the existing house site to the street boundary by approximately 1.0m; and 2.0m to the rear of the site. There is also a maximum cross fall of 2.39m.

The property is a rectangular shape. It is 11.99m wide with side boundaries being 42.67m. Total site area is 512.2m².

The site is developed with a weatherboard/clad cottage on brick footings; single storey at the front with an additional lower level at the rear.

Levels around the house have been considerably altered over time. It would appear from a blockwork retaining wall in the rear garden that the garden level has been raised recently by approximately 840mm. An undercroft area under the existing deck is also bounded by a blockwork retaining wall of 890-1020mm.

The existing driveway is also raised against the northern side of the house. The existing house is on continuous brick footings and the level at the north-eastern corner is approximately 800mm above natural ground level of the front garden. The driveway has been built up approximately 0.55m. The finished levels are higher than those shown on the northern adjoining property near the middle of the site.

Proposed development:

Development approval is sought for demolition of the existing house and construction of a new two storey dwelling as follows:

- Demolition of the existing dwelling and removal of the existing driveway and cross-over;
- Ground floor comprising living/dining and family room, rumpus room and study with laundry and WC, and single car garage;
- First Floor comprising four bedrooms, bathroom, separate WC and en suite for Master Bedroom with a timber deck off the Main Bedroom;
- External works including a roofed timber deck, front porch and new driveway and cross-over.

Development Control Plan Numerical Assessment

The following is an assessment of the proposal's compliance with the numerical standards of the D.C.P. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Density - Sub Zone	1 dwelling/ 500 m ²	1 dwelling/ 512.2 m ²	Yes
Floor space ratio	0.45:1 max 230.5m ²	0.507:1 259.84m ² + 29.34m ²	No
Wall height North side	6.5m	5.5m	Yes
South side	6.85m	7.1m	No
Roof height	3.0m roof allowance	1.4m	No
Fence height			N/A
Setback Front	6.0m or consistent with street setbacks	6.0m but not consistent with street	No
Setback Rear	8.0m	12.60m	Yes
North setback side	Ground: 0.92m First: 1.83m	Ground: 1.0m First: 2.15m	Yes
South setback side	Ground: 1.48m First: 2.35m	Ground: 1.12m First: 2.15m	No No
Open space - total	55%	58.2%	Yes

Environmental Services Division Report No. 40 (Cont'd)

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
	281.71m ²	298.04m ²	
Open space - soft	35% 98.6m ²	63% 178.3m ²	Yes
Open space - above ground	70.42 m ² 25 %	59.22 m ² 21 %	Yes
Number of Endemic Trees	3	0	No
Private Open Space	18 m ²	59.22 m ²	Yes
Car Parking – Residents	2	1 in garage, 1 in driveway	Yes
Shadow -adjacent open space - adjoining EW orientation	> 2 hrs sunlight retained	< 2 hrs retained to front and rear living areas	No

Applicant's Supporting Statement

In support of the application the applicant has submitted a Statement of Environmental Effects. This is on file.

In response to the submissions, the applicant has submitted a written response. This is on file.

Submissions

The application was notified from 07 Nov 06 to 21 Nov 06 and one submission was received from V Thomson of 85 Clontarf Street.

The following issues were raised:

- Excessive Building Envelope (wall height);
- Location of air-conditioning unit next to their Main Bedroom window;
- Privacy issues, particularly adjacent to deck where bedroom is overlooked;
- Replacement of previously existing boundary fence which was demolished by the owners of No. 87 Clontarf Street when they retained and raised their backyard approx 1m;
- Loss of sunshine to primary living area on first floor;
- Loss of sunlight to bedrooms;
- Dwelling should be lowered to natural ground line on the southern boundary to reduce impact;
- Overpowering visual impact when viewed from street;
- Stormwater flow onto No 85 Clontarf Street and under her house;
- Proposed height of driveway without safety fences raises safety issues.

The amended application was notified from 13 March 2007 to 27 March 2007 and one submission was received from V Thomson of 85 Clontarf Street.

- Air-conditioning unit has previously been requested to be relocated away from present location adjacent to a bedroom window located at the front of the house.
- The rear deck is adjacent to a bedroom and privacy and noise reduction screens have been requested;
- New retaining fence needs to be replaced by owners of 87 Clontarf Street;
- The [floor] space ratio to land size still appears to be excessive;
- HW System also needs to be relocated;
- Fences need to be replaced at the owners of No 87 Clontarf Street expense;
- Dwelling still needs to be further setback from street for streetscape;
- Shadow diagrams seem to be inconsistent and needs further explanation on the ground floor at present one window has full sunshine, whilst with the proposed residence two

Environmental Services Division Report No. 40 (Cont'd)

windows on ground floor level have full sun. This seems to be inconsistent with height development.

These matters are discussed later in this report under Planning Comments.

Precinct Community Forum Comments

The application was referred to the Seaforth North Precinct Community Forum with the following comment received;

- That Seaforth North Precinct has discussed this application and advises Council of community comments as follows: We note the minor variations to the DCP and note the comments in the SEE and raise no objection to the DA.

Engineers Comments

Engineering conditions entered, including requirement for on site detention of stormwater and removal of redundant crossing.

Building Comments

No objections to the proposed Class 1(a) dwelling subject to the inclusion of recommended conditions.

Landscape Architects Comments

No objections subject to the inclusion of recommended conditions.

BASIX Report

Water:	40	Target:	40
Thermal Comfort:	Pass	Target:	Pass
Energy:	25	Target:	25

Planning Comments

Council has corresponded regularly with applicants in an attempt to achieve a satisfactory solution rather than a refusal. The applicants had two opportunities to resubmit.

Prior to submission of the current plans the applicant was advised the shadow diagrams (elevations) were incorrect and they should include (as per the first submission) the roof of the rear deck. This was not corrected on the shadow elevations and the plans used the house eaves rather than the deck roof as requested (and shown previously). The building has been lowered 0.5m during the assessment process, but revised shadow diagrams showing the reduction in overshadowing have not been submitted.

The applicant was advised on several occasions that retaining walls on the boundary were not appropriate, but has continued to show them.

The applicants were advised the FSR was excessive at 0.52:1 [35.51m² over] and to reduce it. The revised plans show a reduction of 0.5m from the First Floor bedrooms which reduced the FSR by only 6.17m² to 0.507:1.

Additionally, it had been pointed out the ground line on the southern side was not correct and minor adjustments were made, but these did not resemble what the assessing officer observed and photographed on the site inspection, or the levels the surveyor included on the survey plan.

Environmental Services Division Report No. 40 (Cont'd)

It was apparent the applicants did not wish to make major changes which would allow the application to conform to the Development Control Plan.

Manly Local Environmental Plan 1988:

The site is in zone No 2 – The Residential Zone which permits dwelling houses with the consent of Council.

The proposed demolition and construction of a dwelling house is permissible with consent in the zone. The proposal, subject to deferred commencement conditions included in the recommendation is considered satisfactory in response to the relevant objectives of the zone, with no unreasonable amenity impacts to neighbouring properties.

Consequently the proposal is considered an acceptable form of development.

Manly Local Environmental Plan 1988 Clause 10 Objectives

The following comments are made in regard to the objectives for the Residential Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

(a) *to set aside land to be used for purposes of housing and associated facilities;*

The site is zoned residential and will retain its residential use.

(b) *to delineate, by means of development control in the supporting material, the nature and intended future of the residential areas within the Municipality;*

Council's Development Control Plan for the Residential Zone 2001 Amendment 1 has been considered in the assessment of the proposal, with reference made to the Development Control Plan for the Residential Zone 2007, where appropriate.

(c) *to allow a variety of housing types while maintaining the existing character of residential areas throughout the Manly Council area;*

Subject to deferred commencement conditions included in the recommendation the proposed new dwelling is considered compatible with the character and size of housing in the locality.

(d) *to ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residents or the existing quality of the environment;*

The design of the dwelling house as recommended is considered to maintain acceptable levels of neighbour's amenity.

(e) *to improve the quality of the residential areas by encouraging landscaping and permitting greater flexibility of design in both new development and renovations;*

The proposal has been reviewed by Council's Landscape Officer.

(f) *to allow development for purposes other than housing within the zone only if it is compatible with the character and amenity of the locality;*

The proposal will maintain the residential use of the site.

(g) *to ensure full and efficient use of existing social and physical infrastructure and the future provisions of service and facilities to meet any increased demand;*

The proposal will not result in any increase in demand on services and facilities.

(h) *to encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Subject to deferred commencement conditions included in the recommendation the proposed dwelling is considered to be suitable redevelopment.

Environmental Services Division Report No. 40 (Cont'd)

- (i) *to encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination, and particularly in relation to the land to which Manly Local Environmental Plan 1988 (Amendment No 57) applies.*

Not applicable.

Manly DCP for the Residential Zone 2001:**Floor Space Ratio:**

The allowable FSR is 0.45:1. [230.5 m²]
The proposed FSR is 0.507:1. [259.84 m² +29.34m²]

Excessive FSR was raised as an issue in initial correspondence, when the FSR was initially calculated at 0.52:1 [35.51m² over]. Although substantial reductions were recommended to achieve compliance, the applicants reduced the first floor by 0.5m in length which reduced the area by 6.17m².

In company with excessive wall heights and insufficient setbacks on the southern side, the non-compliant FSR contributes to excessive bulk; with associated amenity impacts such as overshadowing, on the adjoining property and the streetscape.

If the new 2007 Residential DCP is applied with the differing criteria is applied:

When the garage is deducted, the FSR is reduced to 0.47:1

When the external wall thicknesses are deducted as well, the FSR is reduced to 0.44:1

In order to maintain the aims and objectives of the DCP and achieve compatible bulk and scale with existing dwellings in the locality it is recommended that a further reduction of floor space be made which reduces the rearward extent of the ground floor level by 1.0m.

Front Setback:

The proposal is 2.8m forward of N° 89 Clontarf Street and 7.3m forward of N° 85 Clontarf Street. N° 85 is set back further than the consistent line of the street and that site features some substantial trees within the front setback. The existing house on the subject site is approximately 8.4m from the front boundary, which is consistent with N° 89 and the majority of those surrounding.

The DCP says: *"Front setbacks must relate to the corresponding setbacks of neighbouring properties"* and *"In all height sub-zones, if the neighbouring properties present no consistent setback, the minimum building setback is 6.0m from the front street alignment..."* [Clause 3.5.2 Performance Criteria]

The proposal has a 6.0m setback, which is forward of the adjoining properties and those within the street. It is inconsistent and would adversely affect the streetscape, particularly when the additional, required parking is within the front setback. In order to maintain streetscape character it is recommended that the proposed dwelling be repositioned 1.0m further from the front boundary. A deferred commencement condition is included in the recommendation in this regard.

Building Height:

The southern wall is non-compliant with an insufficient side setback. The applicants lowered the building 0.5m from the initial submission where the non-compliant wall height was 7.55m. Allowable wall height is 6.85m, on the basis of the corrected ground line, which the assessing officer has interpolated based on the surveyor data supplied.

Environmental Services Division Report No. 40 (Cont'd)

The inaccuracies in the ground line on the drawings was raised with the applicants as requiring correction, since it did not appear to indicate the site conditions observed, photographed, and indicated on the survey plan supplied. The ground line on Elevation D does not indicate the retaining wall under the deck and the lower ground level adjacent to the lower floor of the existing house.

It should be noted the natural ground line features a number of more recent blockwork retaining walls and an earlier sandstone retaining wall directly on the boundary. This accounts for a substantial difference in height between the subject site and the adjoining N^o 85 Clontarf Street.

If the ground line shown on the drawings is used, the wall height is limited to 6.7m. The drawings as supplied are not to scale, which has meant areas not dimensioned must be scaled, but cannot be done so accurately. A multiplier has been used for scaled dimensions. In the case of the wall height, the calculated height is therefore 7.1m, which is a non-compliance of 0.25m. there is no reason why the new dwelling should not be designed to comply with the height requirements of the DCP. A condition of consent has been included in the recommendation requiring the wall height to be reduced by 0.25m to comply with the DCP.

Side Setbacks:

Side setbacks on the southern side are inadequate by 0.36m at ground level and 0.2m at first floor level. With the required reduction in wall height the south side setback represents a slight variation to DCP requirements of 0.05m at first floor level which is considered acceptable. South side setback of 1.12 for the ground floor level is considered to be acceptable in terms of the aims and objectives of the DCP.

Excavation/Cut & Fill:

The existing dwelling is partially two levels, but the proposal has not taken into account the site contours, some of which appear to be recently altered with retaining walls. This included filling in an area under the existing deck and digging out another portion of the site to install an underground water tank.

The applicants have also shown retaining walls on boundaries. A new retaining wall is proposed near the new driveway and it has been pointed out to the applicants on several occasions since January of this year, that it was not acceptable and should be located 900mm off the boundary. The drawings continue to show the retaining wall on the boundary.

A draft condition of consent is included in the recommendation requiring the retaining wall on the southern boundary to be located a minimum 0.9m from the side boundary to minimise amenity impacts on the adjoining property.

Overshadowing:

The original shadow diagrams supplied in September and October 2006 showed all sunlight would be lost to all windows on the adjoining elevation of N^o 85. This includes a living room within the attic space and all the ground floor bedrooms.

The March 2007 submission showed a dramatic improvement in the shadow elevations on the adjoining property, although the shadow diagrams (plan view) were unchanged. The floor levels on the shadow diagrams were shown to be the same level as previously, although the rest of the application showed a lowering of the FFL of 500mm.

It was requested that the diagrams be corrected, since there were obviously inconsistencies. The drawings lodged on 21 May 2007 show a new shadow diagram, however it was observed the

Environmental Services Division Report No. 40 (Cont'd)

shadow diagrams no longer included the roof over the rear deck, which would continue to have shadow impacts. The elevation shadow diagrams are unchanged from earlier diagrams.

It had earlier been proposed to the applicants that the roof be lowered over the deck by 500mm and the length of the roof be reduced to 4m from the relocated rear wall [part of the suggested FSR reduction], to reduce the impact of overshadowing on the adjoining property. The applicants declined to lower the roof, citing architectural merit.

The lowered roof would also impact on the useability, it was stated. The proposal currently shows the lowest portion of the deck roof, the underside of the rafters on the northern and southern sides, being 2.8m above the deck floor. If the roof was lowered 300mm, the height would still be 2.5m. The underside of the ridge line would still be approximately 3.3m above the deck floor. These heights would continue to be very usable. A condition of consent requiring the roof over the rear deck to be lowered by 300mm is included in the recommendation.

Privacy & Security:

The applicants have agreed to include a privacy screen to the rear deck and to install obscure glazing to the Family Room window (N^o 13). The impacts of noise, privacy and overlooking from the rear deck would be reduced if the dwelling was located further back on the block, however this would exacerbate the overshadowing impacts on the adjoining property to the south.

Parking & Access:

The proposal includes a single car garage only, with the second car space being the driveway, mainly within the front setback.

EP&AA 1979 – Section 79(C)

- (a) *the provisions of:*
- (i) *any environmental planning instrument*
 - (ii) *any draft environmental planning instrument*
 - (iii) *any development control plan*
 - (iv) *the regulations*

The proposal has been assessed having regard to the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2001, Amendment 1.

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

The impacts of the proposed demolition and erection of a dwelling house have been assessed and subject to conditions included in the recommendation the proposal is considered satisfactory.

- (c) *the suitability of the site for the development,*

The site is within the Residential zone and is currently developed with a dwelling house; and subject to conditions contained in the recommendation, the development is suitable for the site.

- (d) *any submissions made in accordance with this Act or the regulations,*

The application was notified in accordance with Council's policy with one submission received for each notification.

- (e) *the public interest.*

Subject to conditions contained in the recommendation, the proposal is considered to be in the public interest.

Environmental Services Division Report No. 40 (Cont'd)**CONCLUSION:**

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2001 (Amendment 1).

The proposal is considered to be satisfactory subject to deferred commencement conditions which are included in the recommendation.

RECOMMENDATION

That that pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979, Development Application No. 477/06 for a "demolition and construction of a dwelling house." at 87 Clontarf Street, Seaforth, be approved but shall not operate until the applicant has submitted amended plans showing:-

- A1. The proposed dwelling repositioned a further 1.0m from the front boundary to maintain streetscape pattern and achieve closer compliance with Council's Residential Development Control Plan Amendment 1, 2001 and 2007.
- A2. The proposed dwelling reduced in height by a minimum of 250mm to comply with the Wall Height provisions of the Residential Development Control Amendment 1, 2001 and 2007 and minimise amenity impacts on adjoining properties.
- A3. The family, lounge/dining reduced by 1.0m from the rear extension to achieve closer compliance with the Floor Space Ratio requirements of Council's Residential Development Control Plan Amendment 1, 2001 and 2007 and minimise amenity impacts on adjoining properties.
- A4. The retaining wall on the south side having a minimum of 900mm setback from the boundary to minimise amenity impacts on adjoining property.
- A5. The roof over the rear deck lowered by 300mm to reduce overshadowing impact on the adjoining property.

This consent is a **"deferred commencement"**.

Evidence of Items A1 to A5 are to be submitted within a period of three (3) months pursuant to Section 80(3) of the Environmental Planning and Assessment Act 1979. The consent will then operate for a period of two (2) years.

Development Application conditions of consent upon compliance with the above matters:

Pursuant to the Building Code of Australia, the building is a Class 1a building.

Council determined this application and has granted consent subject to the conditions described below:

DA1

This approval relates to drawings/plans Nos. 10341 Drawings 1, 9 – 13 dated 16 May 2007 and received by Council on the 21 May 2007 and Landscape Plan L-01 dated 18 August 2006 and received by Council on the 13 September 2006 and as modified by deferred commencement conditions.

Environmental Services Division Report No. 40 (Cont'd)

ANS01

A 1600mm high privacy screen is to be provided to the southern side of the rear deck, to reduce overlooking of adjoining property, plans being amended accordingly prior to the issue of the Construction Certificate.

ANS02

The air-conditioning unit is to be suitably selected and housed to minimize noise impacts on adjacent properties.

ANS03

Window 13 on the southern ground floor elevation is to be either an awning window in translucent glass or have a minimum sill height of 1600mm above finished floor level to minimize privacy impacts on the adjoining property, plans being amended accordingly prior to the issue of the Construction Certificate.

DA009

The construction of a vehicular footpath crossing is required. The design and construction including allowable width shall be in accordance with the current Policy of Council and Specification for the Construction of Vehicle Crossings. All works shall be carried out prior to the issue of Occupation Certificate.

DA010

Separate application to Council for the construction of a Vehicular Crossing for the design, specification and inspection by Council. The design and construction including allowable width shall be in accordance with the current Policy of Council and Specification for the Construction of Vehicle Crossings. Applications shall be made a minimum of twenty-eight (28) days prior to commencement of proposed works on Council's property.

DA011

All surplus vehicular crossings and/or kerb laybacks shall be removed and the kerb and nature strip reinstated prior to issue of the Occupation Certificate.

DA012

The driveway/access ramp grades, access and car parking facilities shall comply with the Australian Standard for Off-Street Parking AS2890.1-2004 or later editions.

DA013

A long section of the driveway shall be submitted with the Construction Certificate Application. The long section is to be drawn at a scale of 1:20 and shall include measured lengths and Relative Levels (RL) of the road centerline, kerb, road reserve, pavement within property and garage floor. The RLs shall include the existing levels and the designed levels.

DA016

Pursuant to Section 97 of the Local Government Act, 1993, Council requires, prior to issue of the Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$5,000. The Deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, at least 7 days prior to the commencement of any work on site.

Note: Where Council is not the principal certifying authority, refund of the trust fund deposit will also be dependant upon receipt of a final occupation certificate by the Principal Certifying Authority and infrastructure inspection by Council.

Environmental Services Division Report No. 40 (Cont'd)

DA017

No obstruction shall be caused to pedestrian use of Council's footpath or vehicular use of any public roadway during construction.

DA341

Any heritage listed stone kerb removed for construction of a driveway or other approved works, is to be removed without damaging it and contact is to be made with Councils Works Manager on Telephone 9976 1455 for the stone to be transported to Councils Depot.

DA342

Separate application shall be made to Council's Infrastructure Division for approval to complete, to Council's standards and specifications, works on Council property. This shall include vehicular crossings, footpaths, drainage works, kerb and guttering, brick paving, restorations and any miscellaneous works. Applications shall be made a minimum of twenty-eight (28) days prior to commencement of proposed works on Council's property. Applicant to notify Council at least 48 hrs before commencement of works to allow Council to supervise/inspect works.

DA343

Any adjustment to the public utility service is to be carried out in compliance with their standards and the full cost is to be borne by the applicant.

DA018

Details of the builder's name and licence number contracted to undertake the works shall be provided to Council/Accredited Certifier prior to issue of the Construction Certificate.

DA019

Insurance must be undertaken with the contracted builder in accordance with the Home Building Act, 1997. Evidence of Insurance together with the contracted builders name and licence number must be submitted to Council /Accredited Certifier prior to issue of the Construction Certificate.

DA021

Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.

DA022

Retaining walls being constructed in conjunction with excavations with such work being in accordance with structural engineer's details. Certification of compliance with the structural detail during construction shall be submitted to the Principal Certifying Authority.

DA023

No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.

DA024

A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm. Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.

Environmental Services Division Report No. 40 (Cont'd)

DA026

All construction works shall be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans with certification being submitted to the Principal Certifying Authority during construction from a registered surveyor certifying ground and finished ridge levels.

DA031

Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.

DA039

Four (4) certified copies of the Structural Engineer's details in respect of all reinforced concrete, structural steel support construction and any proposed retaining walls shall be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.

DA040

Where any excavation extends below the level of the base of the footing of a building on an adjoining allotment of land, the person causing the excavation shall support the neighbouring building in accordance with the requirements of the Building Code of Australia.

DA044

The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.

DA048

The implementation of adequate care during demolition/ excavation/ building/ construction to ensure that no damage is caused to any adjoining properties.

DA058

An adequate security fence, is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.

DA059

Building work shall not progress beyond first floor level until such time as Registered Surveyors details of levels are submitted to the Principal Certifying Authority. These levels shall confirm that the works are in accordance with the levels shown and approved in the development approval.

DA060

On completion of the building structure a report from a Registered Certifier is to be submitted to the Principal Certifying Authority confirming that the building has been completed in accordance with the levels as shown on the approved plan.

DA357

Four (4) copies of Architectural Drawings consistent with the development consent and associated specifications are to be submitted to Council/Accredited Certifier prior to the issue of the Construction Certificate.

Environmental Services Division Report No. 40 (Cont'd)

DA077

An approved water interceptor shall be provided within the property, across the driveway at the property boundary, and all stormwaters shall be conveyed by underground pipe to Council's street gutter to the satisfaction of the Principal Certifying Authority.

DA109

All demolition is to be carried out in accordance with AS2601-2001.

DA111

Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.

DA084

Roofwaters and surface stormwaters from paved areas are to be conveyed by pipeline to Council's street gutter in accordance with Council's standards and specification for Stormwater Drainage.

DA087

A detailed stormwater management plan shall be prepared to fully comply with Council's "Specification for on-site Stormwater Management 2003" and shall be submitted with the Construction Certificate application. The stormwater management plan shall be prepared by a suitably qualified Engineer. The principal Council/Accredited Certifier shall ensure that the design complies with the above said specification prior to the issue of a Construction Certificate

DA088

A system of Onsite Stormwater Detention (OSD) or Onsite Stormwater Retention (OSR) shall be provided within the property in accordance with Council's "Specification for On-site Stormwater Management 2003". The design and details shall be submitted with the Construction Certificate Application and be approved by the Council/Accredited Certifier prior to the issue of the Construction Certificate. The specification can be downloaded from Council's web site www.manly.nsw.gov.au free of charge or a hardcopy can be purchased from Council.

DA095

A copy of the approved Onsite Stormwater Detention (OSD) or Onsite Stormwater Retention (OSR) plan showing Work as Executed (WAE) details shall be submitted to Council prior to the issue of the Occupation Certificate. The work as executed plan shall be in accordance with Council's standards and specifications for Stormwater Drainage and On-site Stormwater Management 2003.

DA100

A positive covenant in respect of the installation and maintenance of onsite detention works is required to be imposed over the area of the site affected by onsite detention and/or pump system prior to the issue of the Occupation Certificate for the building and prior to the release of the trust fund deposit.

DA121

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

DA126

An automatic fire detection and alarm system shall be installed in the proposed dwelling in accordance with the requirements of Part 3.7.2 of the Building Code of Australia 1996 - Housing Provisions.

DA230

No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.

Environmental Services Division Report No. 40 (Cont'd)

DA236

Landscaping is to be carried out in accordance with the approved Landscape Plan submitted in conjunction with the Development Application. Evidence of an agreement for the maintenance of all plants for a period of 12 months from the date of practical completion of the building is to be provided to the Principal Certifying Authority prior to issue of the Final Occupation Certificate.

DA237

All healthy trees and shrubs identified for retention on the plan must be:

- (i) Suitably marked before any development starts and be suitably protected from damage during the construction process; and
- (ii) Retained unless their location or condition is likely to cause damage and their removal has been approved by Council.

DA239

The felling, lopping, topping, ringbarking, wilful destruction or removal of any tree or trees unless in conformity with this approval or subsequent approval is prohibited.

DA240

No tree other than on land identified for the construction of buildings and works as shown on the building plan shall be felled, lopped, topped, ringbarked or otherwise wilfully destroyed or removed without the approval of Council.

DA348

Precautions shall be taken when working near trees to be retained including the following: - do not store harmful or bulk materials or spoil under or near trees - prevent damage to bark and root system - do not use mechanical methods to excavate within root zones - do not add or remove topsoil from under the drip line - do not compact ground under the drip line.

DA261

A sediment/erosion control plan for the site shall be submitted for approval to the Council/Accredited Certifier **prior to the issue of the Construction Certificate**. Implementation of the scheme shall be completed prior to commencement of any works on the site and maintained until completion of the development.

DA269

A Construction Certificate Application is required to be submitted to and issued by the Council/Accredited Certifier prior to any building works being carried out on site.

DA270

Should you appoint Council as the Principal Certifying Authority (PCA) to undertake inspections during the course of construction then the following inspection/certification are required:

Silt control fences
Footing inspection - trench and steel
Reinforced concrete slab
Framework inspection
Wet area moisture barrier
Drainage inspection
Pier holes inspection
Landscaping inspection
Final inspection

The cost of these inspections by Council is \$2,070 (being \$230 per inspection inclusive of GST). **Payment of the above amount is required prior to the first inspection.** Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.

Environmental Services Division Report No. 40 (Cont'd)

At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$110.

DA271

An Occupation Certificate is to be issued by the Principal Certifying Authority prior to occupation of the development.

DA284

Detailed plans of roof trusses indicating type and position of trusses, design wind classification, manufacturer name, stress grade of timber used, and method of bracing and fixing trusses are to be submitted to the Principal Certifying Authority prior to the commencement of roof framework.

DA332

The capacity and effectiveness of erosion and sediment control devices must be maintained to Council satisfaction at all times.

DA333

A copy of the Soil and Water Management Plan must be kept on-site at all times and made available to Council officers on request.

DA334

Stockpiles are not permitted to be stored on Council property (including nature strip) unless prior approval has been granted.

DA335

Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, natural watercourse, kerb or road surface.

DA336

Drains, gutters, roadways and access ways shall be maintained free of sediment and to the satisfaction of Council. Where required, gutters and roadways shall be swept regularly to maintain them free from sediment.

DA337

Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.

DA338

All disturbed areas shall be stabilised against erosion to Council satisfaction within 14 days of completion, and prior to removal of sediment controls.

DA339

Stormwater from roof areas shall be linked via a temporary downpipe to a Council approved stormwater disposal system immediately after completion of the roof area. Inspection of the building frame will not be made until this is completed to Council satisfaction.

DA340

The applicant and/or builder must prior to the commencement of work, install at the periphery of the site, measures to control sedimentation and the possible erosion of the land. The measures must include:-

- (i) siltation fencing;
- (ii) protection of the public stormwater system; and
- (iii) site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.

Environmental Services Division Report No. 40 (Cont'd)

DA289

Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays. Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.

DA319

Details of the method of termite protection which will provide whole of building protection, inclusive of structural and nonstructural elements, shall be submitted to the Council/Accredited Certifier prior to issue of the Construction Certificate. Attention is drawn to the provisions of Australian Standard 3660.1 "Protection of Buildings from Subterranean Termites New Buildings" and to Council's Code for the "Protection of Buildings Against Termite Attack".

DA320

Prior to issue of the Occupation Certificate, a durable termite protection notice shall be permanently fixed to the building in a prominent location detailing the form of termite protection which has been used in accordance with Council's Code for the "Protection of Buildings Against Termite Attack".

DA323

This approval shall expire if the development hereby permitted is not commenced within 2 years of the date hereof or any extension of such period which Council may allow in writing on an application made before such an expiry.

ATTACHMENTS

There are no attachments for this report.

LUM020707ESD_3.doc

***** End of Environmental Services Division Report No. 40 *****

TO: Land Use Management Committee - 2 July 2007
REPORT: Environmental Services Division Report No. 45
SUBJECT: 9 Jenner Street, Seaforth - DA162/05
FILE NO: DA162/05

Application Lodged: 24 March 2005
Applicant: Matthew Grant Architect
Owner: Mr & Mrs Poole
Estimated Cost: \$500,000
Zoning: Manly Local Environmental Plan, 1988 - Residential
Within Foreshore Scenic Protection Area
Surrounding Development: Two and three storey detached dwellings
Heritage: Nil.

SUMMARY:

1. DA162/05 FOR ALTERATIONS AND 1ST STOREY ADDITIONS WITH AN ELEVATED DRIVEWAY AND PARKING WAS SUBMITTED TO COUNCIL ON 24 MARCH 2005.
2. THE APPLICATION WAS NOTIFIED TO NEARBY AND ADJOINING OWNERS IN ACCORDANCE WITH COUNCIL POLICY WITH 5 SUBMISSIONS RECEIVED RAISING CONCERNS OF VIEW LOSS, STREETScape AND DCP NON-COMPLIANCE, AND ONE SUBMISSION OF SUPPORT.
3. THE PROPOSAL WAS REPORTED TO COUNCIL'S DEVELOPMENT ASSESSMENT UNIT ON 31 MAY 2005 AT WHICH TIME RECOMMENDATIONS WERE MADE FOR REFUSAL BASED UPON GROUNDS OF DCP NON-COMPLIANCE, AND IMPACT ON NEIGHBOURS VIEWS AND THE STREETScape.
4. AT THE TIME OF DEVELOPMENT ASSESSMENT UNIT REVIEW, A SUBMISSION WAS RECEIVED FROM THE ARCHITECT REQUESTING THE OPPORTUNITY TO SUBMIT REVISED PLANS, HENCE DETERMINATION WAS WITHHELD.
5. REVISED PLANS PROVIDED A REDUCTION IN ROOF HEIGHT AND NOTIFICATION OF THE REVISED PLANS RESULTED IN FURTHER SUBMISSIONS RAISING CONCERNS WITH THE PROPOSAL AND INCLUDED A DETAILED VISUAL IMPACT ASSESSMENT PREPARED BY A PLANNING CONSULTANT.
6. THE APPLICATION WAS CONSIDERED BY COUNCIL AT ITS LAND USE MANAGEMENT COMMITTEE MEETING OF 1 AUGUST 2005 WHERE COUNCIL RESOLVED TO DEFER THE APPLICATION TO CONSIDER OTHER ROOF DESIGNS SUCH AS A MONO PITCHED ROOF IN ORDER TO MINIMISE THE IMPACT OF VIEW LOSS TO JENNER STREET AND THAT COUNCIL ENSURE THAT THE THREE TREES ON THE DRIVEWAY OF THE PROPERTY ARE RELOCATED.
7. THE APPLICANT'S SOLICITORS AND ARCHITECT HAVE MADE RECENT SUBMISSIONS TO COUNCIL REQUESTING REVIEW OF THE PROPOSAL IN TERMS OF ITS VIEW IMPACT NOW THAT THE DWELLING AT 9 JENNER STREET IS COMPLETE. NO AMENDMENTS AS REQUESTED HAVE BEEN OFFERED.
8. A SITE INSPECTION IS RECOMMENDED.
9. REFUSAL OF THE APPLICATION IS RECOMMENDED.

Environmental Services Division Report No. 45 (Cont'd)

LOCALITY PLAN

Shaded area is subject land.



Introduction

The site and surrounds

The site is located on the lower southern side of Jenner Street with a north-south orientation. It has a regular form with front and rear boundaries of 20.115m width and side boundaries of 56.41m for a total site area of 1,134.6m². The site also has a fall to the south of approximately 12.2m.

Existing development on the site comprises a 3 storey dwelling with attached double garage and inground concrete swimming pool. Landscaping comprises a mixture of lawns with shrubs and small to medium sized trees including 3 mature gum trees of up to 15m height. Neighbouring development comprises a mix of detached 2 and 3 storey dwellings.

Views to the south-west of Middle Harbour (Powder Hulk Bay) and its natural foreshores are obtained from the subject dwelling and many neighbouring dwellings in the locality.

Proposed development

The proposal as revised seeks development consent for alterations and additions to the dwelling as follows:

- Lower ground level alterations / additions including new bathroom and internal stairs;
- Ground level alterations and additions including new laundry, extensions to the southern side balcony and a new covered entry;
- Upper level addition including new master bedroom with ensuite, sitting area and front / rear balconies, new entertaining area and attached terrace which will be 1/2 covered;
- New upper level double parking space and suspended concrete slab driveway with entry elevated above the existing lower level driveway and the sloping council nature strip;

Development Control Plan Numerical Assessment

The following is an assessment of the proposal's compliance with the numerical provisions of the Residential D.C.P. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Control	Provision			
Open Space	794m ² / 70% min			
Landscaping	50% min of O/S			
FSR	0.4:1 / 454m ²	Proposal	Compliance	Breach
Height	7.7m (1:5 slope)	894m ² / 79%	Yes	
Setback – Front	6.0m or defacto	500m ² / 56%	Yes	
Setback – Rear	8.0m	492m ² / 0.43:1	No	+ 38m ²

Environmental Services Division Report No. 45 (Cont'd)

Setback – side	1/3 wall height 2.2m – 2.8m to dwelling	8.0m	No	+ 0.3m
Overshadowing	Min 4hrs sunlight to neighbours living areas	6.0m	Yes	
		25m	Yes	
		2.2m east side 2.3m west side	Yes No	

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Floor space ratio	0.4:1	0.43:1	No
Floor space ratio - existing	0.3:1		
Wall height East side	7.7m	6.5m	Yes
West side	7.7m	6.5m	Yes
Roof height	3.0m	2.5m	Yes
Setback Front	6.0m	1.78m Garage 8.0m Dwelling	No Yes
Setback Rear	8.0m	27.0m	Yes
East setback side	2.2m	2.2m	Yes
West setback side	2.2m	2.01	No
Open space - total	70% (794sqm)	79% (894sqm)	Yes
Open space - soft	50%	86%	Yes
Open space - above ground	<25%	<25%	Yes
Number of Endemic Trees	4	4	Yes
Private Open Space	>18sqm	>18sqm	Yes
Car Parking – Residents	2	3	Yes
Shadow -adjacent open space adjoining NS orientation	>4 hrs sunlight to living areas	>4hrs	Yes
	>1/3 sunlight open space	>1/3	Yes
exist north facing roofs	>10sqm	>10sqm	Yes

Applicant’s Supporting Statement

The applicant submitted a Statement of Environmental Effects and further response to the neighbours submissions which are available for viewing on Council’s file.

Submissions

Five submissions of objection were received in response to the original plans raising concerns of view loss, streetscape and Development Control Plan non-compliance, and one submission of support was received. Submissions in objection included a detailed visual impact assessment prepared by a planning consultant. The issues raised are identified and discussed as follows:

View loss – As discussed later in this report the proposal is considered to result in excessive loss of views and does not satisfy the objectives for view sharing. Consequently this issue is supported as primary grounds for refusal.

Streetscape – As discussed later in this report the proposal is considered to result in detrimental impacts to the streetscape and is acknowledged as a reason for refusal.

Environmental Services Division Report No. 45 (Cont'd)

Non-compliance – As noted in the DCP compliance table and comments, the proposal does not comply with the provisions for FSR and setback. In combination these result in unreasonable view loss to neighbouring properties such that the non-compliances contribute to grounds for refusal.

Alternate design options – It is noted that there are alternate design options that could have been provided to minimise view impacts including repositioning the 1st storey addition and incorporating a lowered mono-pitched roof. Given the extent of view impacts and non-compliances that exist, and that to overcome these would likely require substantial design amendments, such options are considered more appropriately investigated under a new Development Application rather than negotiating amendments.

Precinct Community Forum Comments

Precinct Comments as submitted are stated as follows:

The meeting was addressed by Matthew Grant, Architect, on behalf of the applicants, and by Judith Taylor, on behalf of Numbers 8 and 10 Jenner Street (opposite the subject property).

There was a robust exchange of opinions about the effect of the proposed additions in respect of losses of water views and deterioration of streetscape.

MOTION: 1. The Precinct is EXTREMELY concerned about the issues of view sharing involved in the application, and calls on Council to give maximum consideration to the issues. The Precinct recommends that Council request the applicant to erect extensive templates, before any approval is granted, as the potential view loss and impact on the streetscape is of great concern to the Precinct.

*Proposed by: Vivien Coulson
Seconded by: Anne O'Connell
Passed (unanimous) with 3 abstentions*

Engineers Comments

Additional details are required for the elevated driveway in terms of its dimensions.

Building Comments

Standard conditions of consent advised.

Landscape Architects Comments

Standard conditions of consent advised.

Planning Comments***Manly Local Environmental Plan 1988***

The site is located in Zone No.2 – The Residential Zone which permits dwelling houses with the consent of Council. The proposed alterations and additions are ancillary to the existing dwelling and permissible with consent.

The proposal is considered unsatisfactory in response to the objectives of the residential zone, particularly with respect to objectives (d) and (e) whereby it results in significant impacts to the amenity of neighbouring properties due to loss of water and foreshore views caused by the upper level addition.

Environmental Services Division Report No. 45 (Cont'd)

With respect to streetscape and quality of environment, the elevated driveway will be double width and require the removal of a mature gum tree to 10m height. This is considered to cause detrimental visual impacts to the landscaped character of the streetscape. Consequently the proposal is considered an unacceptable form of development when considered under the relevant objectives of the Residential Zone.

Foreshore Scenic Protection Area - The site is also located in the Foreshore Scenic Protection Area. Pursuant to Clause 17 of the LEP, the additions will result in some increase in visual scale however the site benefits from being located amongst numerous mature trees which soften the visual impact of development to the water. Whilst its visual impact may be considered acceptable from the waterways and foreshores, this is not considered a reason to warrant its approval given the prevailing issues of view loss and streetscape as discussed.

Mainly DCP for the Residential Zone 2001

The proposal has been assessed against the provisions and objectives of the DCP. Non-compliances to the numeric provisions and the design objectives of the DCP are addressed as follows:

Floor Space Ratio

For Subzone 7, the DCP permits an FSR of 0.40:1 for the site. The FSR for the proposal at 0.43:1 exceeds this by 38m². It is noted that this includes the lower level basement which has been enclosed with doors and windows as a habitable room and is therefore included as floor area. This basement area is not shown on the architectural plans but is noted on the survey which describes the existing dwelling as 2 and 3 storeys. For a breach to the FSR to be supported the applicant would need to demonstrate that on merit the proposal satisfies the objectives for Floor Space Ratio.

From inspection of the site and surrounds it is evident that the additional bulk and scale resulting from the 1st storey addition will result in substantial view loss from the living areas of neighbouring dwellings diagonally opposite to the northeast. Given the view impacts resulting the proposal is not considered to satisfy key objectives for the FSR provision, being to control bulk and scale and minimise view loss, the breach to the FSR provision is considered unacceptable. The issue of view loss is further discussed in this report.

Height

The maximum permissible height based upon the slope of the site adjacent to the additions is calculated at 7.7m. The proposed additions as amended have a maximum height of 6.5m and is therefore compliant. However, concern is raised with the height of the roofed balcony as measured from the southern edge of the balcony roof being 8.0m. A key objective of the height provision is to minimise view loss. Given the magnitude of view loss resulting from the first storey addition, the height of the balcony roof is considered unacceptable.

Setback

The existing dwelling has setbacks to the eastern and western side boundaries of 2.2m and 2.01m respectively, with the proposed 1st storey addition seeking to align with the walls below. A key objective of the setback provision is to minimise view loss. It is acknowledged that the key cause of view loss in this case is the increase in height, however given the magnitude of view loss resulting from the first storey addition, the departure to the setback provision is not considered to be justified. As such a departure to the setback provision may only be considered acceptable in this case if the additions were redesigned to minimise any increase in roof height and resulting view loss.

Environmental Services Division Report No. 45 (Cont'd)Privacy

The alterations and additions to each level will not result in a substantial increase in overlooking to neighbouring properties, with existing trees assisting to screen potential overlooking.

View sharing

Several properties in Jenner Street and its surrounds enjoy water views to the southwest to Middle Harbour. An assessment of these views has been made following principles of view sharing. The views take in Powder Bulk Bay, the natural foreshores of Castlecrag and Northbridge, passing boats, and multi-storey buildings along distant ridges. These views are identified as the primary elements of interest that are enjoyed by these properties, with passive and active elements (static and moving elements) contributing to their significance. Secondary district views across to the south and southeast of Seaforth are also considered to contribute to the quality of the view, however being views of suburban landform and housing, they are of lesser significance than the water and foreshore views.

In relation to the site, a number of properties on the opposite side of Jenner Street look diagonally over the existing dwelling to the south west from their front living rooms and balconies which are elevated above the street to access these views. One of these properties has a dwelling currently under construction which will have its living room and front balcony positioned to maximise these views. It is noted that for these properties the water views are offset from the primary outlook to the south, however given that these dwellings have been designed to maximise access to these views with their living areas and balconies oriented to these views, the resulting view loss is considered a significant loss to the amenity of these properties.

The proposed upper level addition as amended will increase the height of the roof ridge by 2.0m for the width of the dwelling across the site, resulting in a significant loss in depth of views looking down to the water. The only view towards the water remaining would be distant narrow glimpses of water and foreshore areas. Given the magnitude of view loss and that the existing dwelling already benefits from these views without the need for a 1st storey addition, the proposal cannot be considered to achieve reasonable view sharing.

It is noted that the design as amended reduces the extent of view impact from near complete loss of views to significant loss of views, however under the circumstances the extent of view loss is considered to remain unacceptable. Repositioning the additions and reconfiguring the roof form to a mono-pitch or flat roof form could be achieved to reduce these view impacts, however substantial modifications would be required to achieve this and would warrant a new Development Application.

Consequently the proposal as amended is considered to remain unacceptable in terms of view loss with this being a primary reason for refusal.

Streetscape

The proposed new double width driveway and double parking space attached to the first storey will be elevated above the existing ground level, driveway and front nature strip. Within the nature strip a mature gum tree of approximately 10m height and spread will require removal, which is clearly indicated on the survey information submitted with the original application.

This tree is considered to provide a positive contribution to the quality of the streetscape. Consequently its removal to facilitate the new driveway would be detrimental to the streetscape, making the existing dwelling and upper level additions visually prominent, with the additions also resulting in loss of public views from the street. Given these circumstances and that the existing dwelling has driveway access to a double garage at its lower level which satisfies the access and

Environmental Services Division Report No. 45 (Cont'd)

parking requirements for single dwellings, the proposed double width driveway and parking space is considered unacceptable.

Environmental Planning and Assessment Act 1979, S.79C

The proposal has been considered pursuant to Section 79C of the Environmental Planning and Assessment Act 1979, relevant State Planning Policies, the Manly Local Environmental Plan, 1988, the Development Control Plan for the Residential Zone 2001 and the Building Code of Australia.

From this assessment the proposal as amended is considered to remain an unsatisfactory form of development due to departures to the FSR, height and setback provisions causing adverse amenity impacts in terms of view loss, and due to its adverse impact on the streetscape.

Furthermore it is considered unsatisfactory in response to issues raised in neighbours submissions. Consequently the proposal is considered unsatisfactory pursuant to S.79C of the Act.

Land Use Management Committee Issues

Council at its Land Use management Committee meeting of 1 August 2005 resolved as follows;

- “1. That consideration of Development Application No.162/05 for alterations and upper level additions to the existing dwelling at 9 Jenner Street, Seaforth, be **deferred** to consider other roof designs, such as a mono-pitched roof in order to minimise the impact of view loss to Jenner Street;
2. That Council ensure that the three trees on the driveway of the property are relocated; and
3. That Council reconsider the Development Application with revised plans at an appropriate time.”

In response to this the owner, applicant/architect and owners solicitor have made written submissions, copies of which are attached to this report. The applicant states that a mono pitch roof would cause adverse visual impacts to the streetscape and cannot be proven to reduce view impacts. Reference is also made to the Tenacity Judgment and whether a mono-pitch roof would succeed in reducing view impacts. Without this being demonstrated, there is no justification to this argument with the view impact considered to be excessive. Consequently the proposal as amended is considered to remain unacceptable in terms of view loss with this being a primary reason for refusal.

CONCLUSION:

The application has been assessed pursuant to Section 79C of the EP&A Act, including the Manly Local Environmental Plan 1988 and the Manly Development Control Plan for the Residential Zone. The design as amended is considered unsatisfactory under the provisions of the DCP and the LEP objectives for the residential zone, and fails to adequately resolve issues raised in neighbours submissions. Consequently it is considered in the public interest that the Development Application be refused.

Environmental Services Division Report No. 45 (Cont'd)**RECOMMENDATION**

That Development Application No.162/05 for alterations and upper level additions to the existing dwelling at 9 Jenner Street, Seaforth, be refused for the following reasons:

1. The proposal is considered inconsistent with the relevant objectives of the Residential Zone under Manly LEP 1988, particularly with respect to objectives (c), (d) and (e) due to excess visual bulk and scale impacts to the surrounds with respect to impacts on views and streetscape, having regard to section 79C(1)(a)(iii), (b), (c), (d) and (e) of the Environmental Planning and Assessment Act 1979.
2. The proposal is considered an overdevelopment of the site given that it does not comply with the Manly Development Control Plan (DCP) for the Residential Zone with respect to the provisions for Floor Space Ratio, height and setback as stated in Sections 3.3, 3.4 and 3.5 of the DCP, having regard to section 79C(1)(a)(iii), (b), (c), (d) and (e) of the Environmental Planning and Assessment Act 1979.
3. The proposal does not satisfy the objectives for the provisions of Floor Space Ratio, height, setback, view sharing and streetscape as stated in Sections 3.3, 3.4, 3.5, 3.6, 3.8 and 3.9 of the DCP, having regard to section 79C(1)(a)(iii), (b), (c), (d) and (e) of the Environmental Planning and Assessment Act 1979.
4. The proposal is considered to result in unreasonable built impacts to its locality in terms of excess bulk and scale, loss of views from neighbouring properties and the street, and impacts on streetscape landscaping, having regard to section 79C(1)(a)(iii), (b), (d) and (e) of the Environmental Planning and Assessment Act 1979.
5. The proposal is not considered in the public interest, primarily due to its amenity impacts to neighbouring properties in terms of view loss and impacts to the streetscape, having regard to section 79C(1), (e) of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS

AT- 1 Response to submissions - Staunton Beattie 7 Pages

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***** End of Environmental Services Division Report No. 45 *****

ATTACHMENT 1

Environmental Services Division Report No. 45 - 9 Jenner Street, Seaforth - DA162/05
Response to submissions - Staunton Beattie

SBS STAUNTON • BEATTIE
solicitors

Our Ref: M. Staunton
Your Ref: D Stray - DA162/2005

30 March 2007

Mr David Stray
Manly Council
1 Belgrave Street
MANLY NSW 2095

Dear Mr Stray

UNEX

Manly Council
e-19816

REC 4 - APR 2007
DA 162/05

Distribution

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David Stray

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DAVID & SHARYN POOLE - DEVELOPMENT APPLICATION NO. 162/2005 FOR ALTERATIONS AND ADDITIONS TO EXISTING RESIDENCE PROPERTY: 9 JENNER STREET, SEAFORTH

We act on behalf of David & Sharyn Poole the owners of the above property and the proponents in respect of the above development application.

We note that this matter was deferred by Council at its LUM Committee Meeting in August 2005 for our client to consider alternate roof designs. We note that at the meeting the Council considered that our client should alter the roof design of the dwelling from a pitched roof to a flat roof on the basis that such a design change might minimise view loss from dwellings on the higher side of Jenner Street.

Attached are the following letters:

1. Letter from our client's architect Matthew Grant to Manly Council dated 15 February 2007.
2. Letter from our clients to Manly Council dated 21 February 2007.

We have reviewed the above letters together with the proposed plans, planning controls and relevant case law.

It is clear that Manly Council's DCP for the residential zone requires view sharing. The relevant planning principle can be found in the decision of Senior Commissioner Roseth in Tenacity Consulting v Warringah Council [2004] NSWLEC 140. The ultimate question is "whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of the neighbours."

Liability limited by a scheme approved under Professional Standards Legislation

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DX 777 SYDNEY

ABN 46 765 015 785

ATTACHMENT 1

Environmental Services Division Report No. 45 - 9 Jenner Street, Seaforth - DA162/05 Response to submissions - Staunton Beattie

- 2 -

30 March 2007

The DCP specifies maximum roof heights. An objective of the roof height control is the preservation of views. Our clients's proposed design provides for a pitched roof 1.7m lower than the permitted maximum roof height for a pitched roof. Our clients and their architect have investigated the possibility of changing the roof form from a pitched roof to a mono-pitched roof. We are instructed that the effect of such a change would be a roof form that is out of character in the streetscape which would make little if any difference to the alleged view loss.

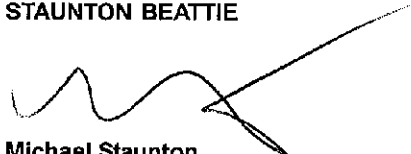
In the circumstances the answer to the ultimate question posed in the Tenacity planning principle is that the change in design to a flat roof would not improve the impact on the neighbours view but instead would result in a further adverse impact in terms of urban design and inconsistency with streetscape.

In view of the above our client requests that their DA be put back before Council for determination. We note that when the DA was last considered that the neighbours' dwelling was under construction so Council was only able to consider estimated view loss. As the dwelling is now complete we request that the assessing officer attend at the neighbours' property and take photos of the actual impact of the proposed development on views from the neighbours' property and that those photos be made available to our clients' architect for inspection.

Could you please advise when this matter is to be considered by Council as the writer would like to attend at the meeting and address the Council.

We look forward to hearing from you.

Yours faithfully
STAUNTON BEATTIE



**Michael Staunton
Partners**

MA88324.101

ATTACHMENT 1

Environmental Services Division Report No. 45 - 9 Jenner Street, Seaforth - DA162/05 Response to submissions - Staunton Beattie

DAVID & SHARYN POOLE

February 21, 2007

Manly Council
1 Belgrave Street,
Manly, 2095.

Attention : Mr. David Stray – Land Use Management

RE : Alterations & Additions to Existing Residence
At Lot 357 DP 5809 No. 9 Jenner Street, Seaforth.
For Mr. & Mrs. D. & S. Poole DA 162/2005

Dear Sir,

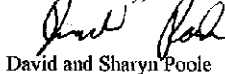
In mid 2005 my wife and I began the process of submitting a Development Application to Council for addition and modifications to our home. The application was met with two main objections from numbers 8 and 10 Jenner St, and three other objections which were solicited to support the argument of the main objectors. Our application meets the guidelines of the DCP; the proposed dwelling is 1.7 meters lower than the allowable height, and is reasonable in both scale and impact on our surrounding neighbors. Any excesses highlighted by Council on the Environmental Services report, such as heights and setback, are due to existing structure or are within (normally) allowable limits, and where possible have been addressed by our Architect in a manner sympathetic to Council's concerns and the design of our home.

Upon review of the application you will find that the only point of real consideration is that of view sharing with the houses at numbers 8 and 10 – specifically water view sharing (the actual impact that our development would have on the objectors' total vista is in our opinion negligible). At the time of designing our home, the objectors had no view over the area of our house we propose to modify. Any water views were provided by us allowing the removal of trees to allow our western neighbors to develop their property. It is particularly galling that early in the application process my wife and I naively gave permission to the Stepa's at number 8 to trim the trees at the front of our house so that they could improve their view (for an alleged badly needed bank valuation) – a costly lesson in human nature.

Council's last instruction to us was to give consideration to a mono-pitch roof design, which we have. With our Architect we have determined that a mono-pitch roof design was unsympathetic to the style and design of our home, not in keeping with the surrounding roof forms and gave no actual benefit to our objecting neighbors (an evaluation of the impact of a mono-pitch roof has been prepared by our Architect, Matthew Grant, and is attached). However, such a statement holds little weight against the impression of a view loss that can not be actually proven or disputed. We were unable to prove the impact on view because Mr & Mrs Stepa of 8 Jenner Street had demolished their house in readiness for their own development. When, in 2005, Council visited their site to inspect the view impact, Councilors stood on a platform on the eastern side of the Stepa property. Our photographic records of the platform show that it had been placed at the rear of their property, and positioned in a manner to best demonstrate the objectors claim. In the interest of a fair assessment we have waited more than a year for the completion of the development at number 8 Jenner Street before now making our final request of Council.

We have made many compromises to our design at significant cost, researched changes, and waited for buildings to be erected, and now we request that Council come to our homes, view the real potential view loss from both levels of our neighbors house at number 8 and make a final and fair determination on our applications impact to their vista. We look forward to a speedy resolution.

Yours faithfully,



David and Sharyn Poole

9 JENNER STREET • SEAFORTH NSW • 2092
PHONE: 9949 7842 • FAX: 9949 7834

ATTACHMENT 1

Environmental Services Division Report No. 45 - 9 Jenner Street, Seaforth - DA162/05
Response to submissions - Staunton Beattie

25th March, 2007

Manly Council
1 Belgrave Street,
Manly; 2095.



Attention : Mr. David Stray - Land Use Management

RE : Alterations & Additions to Existing Residence
At Lot 357 DP 5809 No. 9 Jenner Street, Seaforth.
For Mr. & Mrs. D. & S. Poole DA 162/2005

Dear David,

Further to Council's letter dated 08/08/2005 and on behalf of the Poole family I reply as follows:

- 1/. We have considered other roof designs, such as a mono-pitched roof and find that such a roof pitch will not reduce impact of view. Please find enclosed a section indicating a mono-pitched roof similar to No.8's recently constructed mono-pitched roof of 27.5 degrees and also 22.5 degrees which both show a higher ridge RL than that proposed. Further, a mono-pitched roof compromises the architectural design of the external appearance and internal space of the proposed extension. It is not in-keeping with streetscape as previously advised to Council and now can be seen by No.8's appearance. I am still of the opinion that the lowering of the ridge height by 900mm from the original proposal to address objectors view loss concerns provides a building that is 1.7M below the allowable height and therefore providing an additional view corridor of 1.7M. Council's recommendation raises concern as to the critical wall height to the southern edge of the balcony roof contributing to view loss is false. The covered balcony roof does not impact on any views. The suggested wall height to this roof is not considered as the wall height and the compliance table indicates a wall height of 6.5M. To alleviate concern that this space will not be used for

ATTACHMENT 1

Environmental Services Division Report No. 45 - 9 Jenner Street, Seaforth - DA162/05 Response to submissions - Staunton Beattie

anything but a covered balcony by the Poole family we have designed an operable & openable vergola roof sections to both sides of the roof as per the attached sketch. We are not prepared to change the designed roof as per the above.

- 2/. The trees on the driveway will be relocated and an amended landscape plan will be submitted with the Construction Certificate Application.

- 3/. We consider that the appropriate time has arrived for Council to reconsider and determine the Application as the main objector No.8 Jenner Street has constructed their building. We believe that Council can now assess the potential view loss from their building. We trust that Council will remember that the objectors erected a platform on their site to allow Council to assess view loss in a position and height that we believe was incorrect and designed to mislead Council. We believe that structure was never confirmed by a Surveyor Certificate as required for the templates we provided. Enclosed is a photograph taken from their front door and indicates the lack of potential view loss. The current plans revised in response to the objectors concerns of loss of view are before Council. My clients are not prepared to revise the plans any further.

In respect to alleged non-compliances to FSR and setbacks contained in the report are addressed as follows:

Floor Space Ratio

FSR is within 5sqm of the allowable 0.4:1 and is compliant. The sub-floor space under the building claimed as contributing to floor space in the report is utilized for pool plant and tools and paint tins and has a ceiling height of 2.0M. Therefore it is unreasonable to claim FSR non-compliances as contributing to grounds for refusal.

Setbacks

Setbacks are compliant. The rear setback is 27M. The East side setback complies as noted in the report. The west side setback is 9.0M when averaged under Manly's DCP part 3.5.3ii(c). The section

ATTACHMENT 1

Environmental Services Division Report No. 45 - 9 Jenner Street, Seaforth - DA162/05
Response to submissions - Staunton Beattie


of wall that has a setback of 2.015M is existing and the new first floor wall continues above. The wall height to this wall is 6.5M and one-third is 2.167M which represents a 150mm encroachment. However, given that the setback to the Family Room western wall is 11.3M and the garage is 13.0M the western setback more than complies when averaged. The front setback to the building is 8.0M and to the proposed first floor addition. The alleged non-compliant front setback to the garage of 1.78M is to an existing structure. Therefore it is unreasonable to claim setback non-compliances as contributing to grounds for refusal.

The proposal in its current form is fully compliant with Manly Council's DCP in respect to FSR, Setbacks, Landscaping, Wall & Roof Heights, Carparking, Privacy, Streetscape, Overshadowing and View Sharing provisions. As discussed, alternative roofs designs will detrimentally impair the streetscape and the architectural intent. There is a 1.7M additional view corridor provided under the allowable wall and roof heights.

My clients have shown tolerance and patience with their neighbours and Council in allowing time to pass accommodating construction of No.8 Jenner Street new building. Their proposal is fully compliant and I request council re-visit the site then make a determination with regard to their DCP.

I look forward to a positive resolution of the Development Application in the near future.

Yours Faithfully,

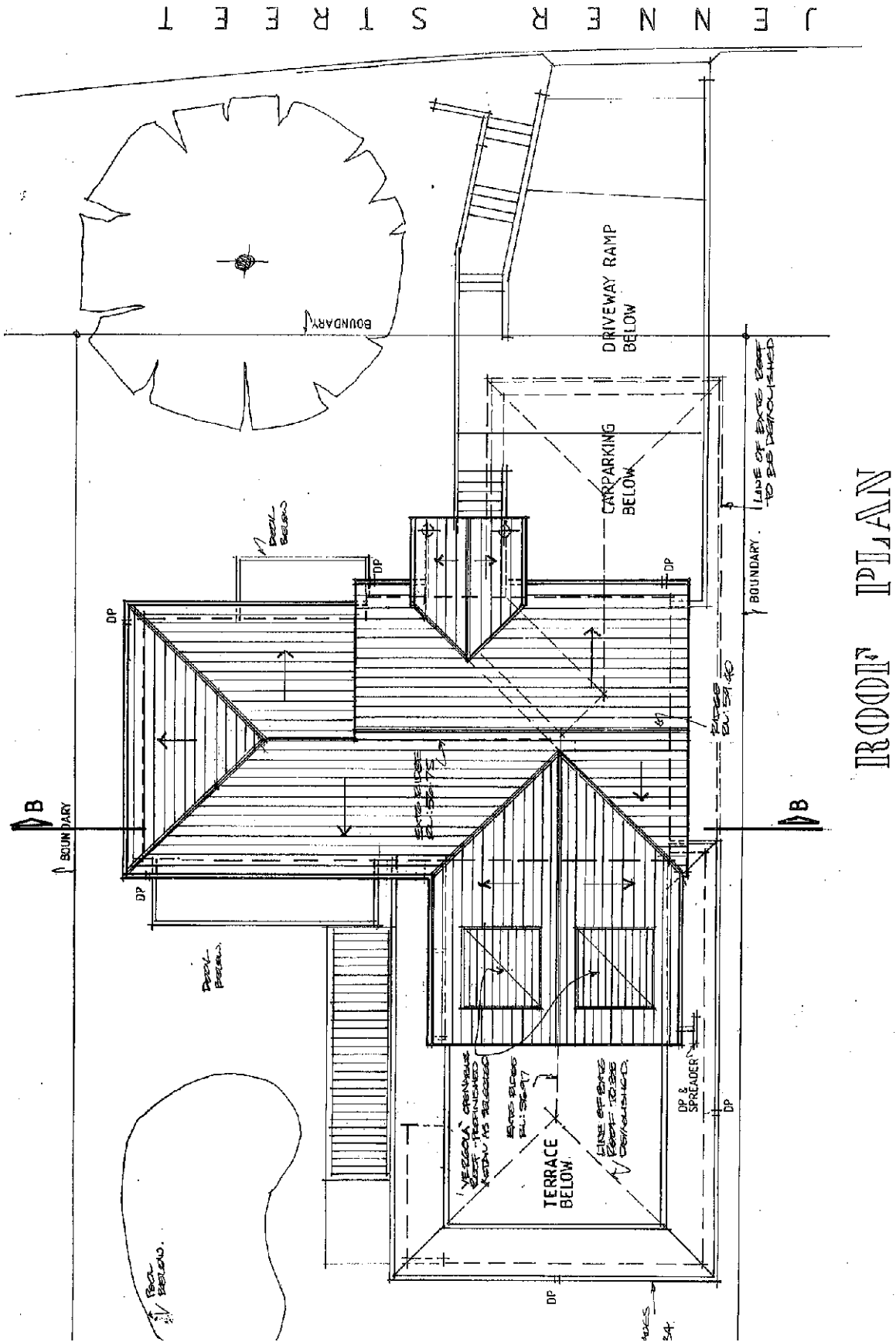


Matthew Grant
Chartered Architect.

Cc. Mr. & Mrs. D. & S. Poole

ATTACHMENT 1

Environmental Services Division Report No. 45 - 9 Jenner Street, Seaforth - DA162/05
 Response to submissions - Staunton Beattie



ROOF PLAN

TO: Land Use Management Committee - 2 July 2007
REPORT: Environmental Services Division Report No. 41
SUBJECT: 155A Seaforth Crescent, Seaforth - DA524/06
FILE NO: DA524/06

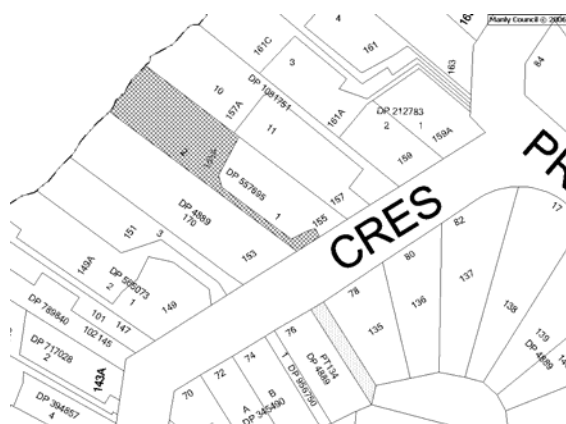
Application Lodged: 02 January 2007
Applicant: Mr Ronald Jaensch
Owner: Ronald & Jennifer Jaensch
Estimated Cost: \$100,000
Zoning: Manly Local Environmental Plan, 1988 - Residential Sub-Zone 7
Surrounding Development: Residential
Heritage: N/A

SUMMARY:

1. DEVELOPMENT CONSENT IS SOUGHT FOR A NEW SWIMMING POOL AND DECK
2. THE PROPOSAL WAS NOTIFIED TO NEARBY AND ADJOINING PROPERTY OWNERS WITH TWO SUBMISSIONS RECEIVED.
3. THE APPLICATION WAS ALSO REFERRED TO SEAFORTH PRECINCT COMMUNITY FORUM AND COMMENTS WERE RECEIVED.
4. A SITE INSPECTION IS RECOMMENDED.
5. THE APPLICATION IS RECOMMENDED FOR REFUSAL.

LOCALITY PLAN

Shaded area is subject site.



REPORT

Introduction

Site Analysis:

The site is located on the western side of Seaforth Crescent. The site has a north-west to south-east orientation and is legally described as Lot 2, DP 557695.

The site slopes very steeply from the south-eastern boundary to the waterline, falling approximately 36m. The property is a battle-axe block of rectangular shape with an access handle 2.44m wide and an additional garage area fronting Seaforth Crescent. It is approximately 22.5m wide with side boundaries being 45.54m on the north-eastern side and 90.545m on the south-

Environmental Services Division Report No. 41 (Cont'd)

western side. The lower boundary on the north-west is the mean High Water Mark of Middle Harbour. Total site area is 1208m².

The site is developed with single and two-storey timber clad dwelling. A rendered masonry garage exists at the Seaforth Crescent boundary.

The site was described in the Stability Report for the original house and inclinometer proposal (dated 15 June 1987) ie prior to construction, as:

“The block is underlain by Hawkesbury Sandstones which outcrop in the access corridor and at a number of locations on the block. The soil cover is a colluvium [*loose sediment that accumulates at the base of a hill*] of sandy loams and sandy clays with rock fragments. The sandy clays merge into the weathered zone of the underlying rocks. The soil cover varies from shallow to some 2 metres deep and has been modified by the terracing which is up to 2m deep in places.”

These terraces with 2m soil depth appear to be in the garden on the Seaforth Crescent side of the block, rather than the waterfront side.

Proposed development:

Development approval is sought for a new swimming pool and deck as follows:

- Concrete Swimming pool on six footings of varying height to 4650mm in the original proposal;
- Adjoining timber deck and pool fencing;

Development Control Plan Numerical Assessment

The following is an assessment of the proposal's compliance with the numerical standards of the D.C.P. Where a variation is proposed to the standards, an assessment is included in the Planning Comments.

	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Setback- pool N-E Side	3.65m (as amended)	3.5m	No
Setback- pool deck SW Side	5.2m (as amended)	3.6m	No
Setback to Foreshore	15m	12.1 – 14.4m	No
Open space - total	70% 845.5m ²	83.6% 1010m ²	Yes
Open space - soft	50%	>50%	Yes
Number of Endemic Trees	4	3 existing 6 proposed	Yes

Applicant's Supporting Statement

In support of the application the applicant has submitted a Statement of Environmental Effects. This is on file.

In response to the submissions, the applicant has submitted a written response and a copy of this statement is an attachment to this report.

Environmental Services Division Report No. 41 (Cont'd)**Submissions****The Original Application**

The original application was notified from 2 January 2007 to 2 February 2007 and two (2) submissions were received from Leisa Barry of 153 Seaforth Crescent; and Ted Byrne of 157A Seaforth Crescent.

The following issues were raised:

- The height of the pool/deck above the ground on the south west boarder is 6.2m not 4.6m as quoted on page 3 [of the SEE]. I question whether this will lead to invasion of privacy and overshadowing of any future development we carry out on our adjacent block.
- Where is the path going to access this deck? There is nothing really indicated on the plans, unless they go under their inclinator?
- How are they going to access the waterfront as their existing stairs will be directly under their deck? Where is the path going to access this deck? There is nothing really indicated on the plans unless they go under their inclinator.
- Where are they going to plant the Lilli Pilli and other trees to satisfy the environmental effects statement on the south west border? They do not have permission to plant on our land; they have already carried out significant planting on the border and on our land without permission. *This does not appear to be the case, when checking the survey plan.*
- At the end of the DA they state that they are going to fill the pool with water from Middle Harbour. Where are the pump and pipes for this water going?
- The distance of the deck from the existent dwelling is reported to be 0.4m to allow for the Sydney Water Sewerage pipe and at other times in the report has 2.5m which is it?
- I have a bit of trouble establishing the exact RLs, the height of the structure and the distance towards the west to correctly evaluate the final impact on our home. The proposed privacy wall between the two properties on the northern side would have to be very effective as the RL of the pool appears to be slightly higher than my living rooms and bedroom and would therefore look straight into all of these areas.
- It would be appreciated if this narrow northern section of the pool could be made non trafficable by the substitution of a planter with a totally private screen in the middle so planting would grow up each side.
- Right now, it appears that the total height of the structure above ground, including the screen, would be approximately 6.45m high. Landscaping would have to be very effective.

Precinct Community Forum Comments

The Chair said the DA team was not convinced that the vegetation and camouflage methods would work due to the fall of the land and the available soil for the planned vegetation which had inadequate height. There was a question if similar adjacent or nearby pools and whether they were regarded as in ground or not.

Motion: that Seaforth Precinct has discussed this application and advises Council of community comments as follows:

The Seaforth Precinct reiterates its support for foreshore protection and is concerned that the proposed structure does not meet the foreshore protection provisions of the DCP. It is of such height (over 6m in parts), bulk and appearance (bathtub on stilts) that its impact when viewed from Middle Harbour cannot reasonably be mitigated."

Engineers Comments

No objection subject to conditions.

Environmental Services Division Report No. 41 (Cont'd)**Building Comments**

No objection subject to conditions.

Landscape Architects Comments

No objection subject to conditions.

BASIX Comments

- The applicant must install a rainwater tank of at least 1673 litres on the site. This rainwater tank must meet, and be installed in accordance with, the requirements of all applicable regulatory authorities.
- The applicant must configure the rainwater tank to collect rainwater runoff from at least 230 square metres of roof area.
- The applicant must connect the rainwater tank to a tap located within 10 metres of the edge of the pool.
- The swimming pool must be outdoors.
- The swimming pool must not have a capacity greater than 54 kilolitres.
- The applicant must install a pool pump timer for the swimming pool
- The applicant must not incorporate any heating system for the swimming pool that is part of this development.

The applicant has handwritten on the report "Rainwater tank not applicable because pool to be replenished with sea water."

NSW Maritime

The matter was considered by the Foreshores and Waterways Planning and Development Advisory Committee and the minutes are as follows:

The Committee objects to the proposed development on the grounds that:

1. it will have an adverse visual impact when viewed from the waters of Powder Hulk Bay;
2. it will visually obstruct the dramatic topography of the site when viewed from Middle Harbour;
3. it will not provide for a high quality of built and landscape design; and
4. it will have an adverse cumulative impact on the site and foreshore building line.

Planning Comments

A pre-DA meeting was held prior to submission of this application on 28 November 2006 with a Duty Planner.

The comments recorded included:

- Pool elevation – excessive, look at alternatives and vegetation for screening.
- Within 15m setback.
- Refer to Sydney Harbour Foreshores and Waterways Area DCP 2005 – www.planning.nsw.gov.au
- BASIX

Manly Local Environmental Plan 1988:

The site is in zone No 2 – The Residential Zone which permits dwelling houses with the consent of Council.

Environmental Services Division Report No. 41 (Cont'd)

The proposed swimming pool and deck is permissible with consent in the zone. The proposal is considered unsatisfactory in response to the relevant objectives of the zone, and is considered to degrade the existing quality of the environment and the amenity of surrounding residents.

Foreshore Scenic Protection Area

The site is also located within the Foreshore Scenic Protection Area. The proposal will increase the bulk or scale of the existing development, and being located within the 15m required foreshore setback it will be readily visible from the foreshores and waterways of Middle Harbour/Powder Hulk Bay.

Consequently the proposal is not considered an acceptable form of development.

Sydney Harbour Catchment SREP

The proposal is considered unacceptable in terms of potential impact on the natural environment and scenic amenity of the Harbour and Foreshore, in particular, the impact arising from the extent of the built form of the proposed swimming pool.

Manly Local Environmental Plan 1988 Clause 10 Objectives

The following comments are made in regard to the objectives for the Residential Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

(a) *to set aside land to be used for purposes of housing and associated facilities;*

The site is zoned residential and will retain its residential use.

(b) *to delineate, by means of development control in the supporting material, the nature and intended future of the residential areas within the Municipality;*

Council's Development Control Plan for the Residential Zone 2001 Amendment 1 has been considered in the assessment of the proposal.

(c) *to allow a variety of housing types while maintaining the existing character of residential areas throughout the Manly Council area;*

The proposed swimming pool and deck are not considered desirable in relation to the existing character of the area.

(d) *to ensure that building form, including alterations and additions, does not degrade the amenity of surrounding residents or the existing quality of the environment;*

The design of the proposed swimming pool and deck is not considered to maintain the existing quality of the environment and will cause loss of amenity to surrounding residents.

(e) *to improve the quality of the residential areas by encouraging landscaping and permitting greater flexibility of design in both new development and renovations;*

The proposal has been reviewed by Council's Landscape Officer.

(f) *to allow development for purposes other than housing within the zone only if it is compatible with the character and amenity of the locality;*

The proposal will maintain the residential use of the site.

(g) *to ensure full and efficient use of existing social and physical infrastructure and the future provisions of service and facilities to meet any increased demand;*

The proposal will not result in any increase in demand on services and facilities.

Environmental Services Division Report No. 41 (Cont'd)

(h) *to encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

The proposed swimming pool and deck are not considered to complement the site, and do not respond to its form, slope and surrounds.

(i) *to encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination, and particularly in relation to the land to which Manly Local Environmental Plan 1988 (Amendment No 57) applies.*

N/A

Manly DCP for the Residential Zone 2001:**Setback - Foreshore:**

The proposal is within the 15m foreshore setback. In-ground pools are permissible within the setback, provided no part of the pool structure projects more than 1m above the existing ground level, however the projection above ground level varies from originally 4.65m and 6.2m; reduced by the applicant by one metre to 3.65m and 5.2m.

The applicant was advised very early in the assessment process the Foreshore setback would be an issue. The setback has been measured as 12.1m from the MHW at the closest point to 14.4m at the farthest.

Part of the limitations of locating the pool has been the Sydney Water sewer line which runs diagonally across the site. The depth of the sewer line is not indicated on the drawings. The area on the house side of the sewer line to the retaining wall immediately under the house varies in width between approximately 6m and 3m. A second retaining wall indicates a change in level of approximately one metre.

It was suggested to the applicant he consider either narrowing the pool or relocating it under the existing deck, but the applicant rejected these suggestions.

It is considered the excessive height and the encroachment on the Foreshore setback has a detrimental effect on the Foreshore Scenic Protection Area.

Side Setbacks:

The pool's setback requirements from the north-eastern side boundary must be equivalent to the height of the concourse above the existing ground level and appropriate landscape works required for amenity and privacy. The proposed setback is insufficient and the adjacent rock face limits opportunities for screening planting. Options offered by the applicant include either a privacy screen with planting or a non-trafficable area, but not both. Any planting would necessarily be salt-resistant, which would preclude many screening-style plants.

Overshadowing:

One of the objectors has expressed concerns regarding overshadowing on her future home site closer to the water, when sub-division takes place. It is considered the pool would make no appreciable difference to overshadowing. The location for a future house on the adjoining block would be required to comply with the 15m Foreshore setback. This would place the house roughly equivalent to the nearby existing properties.

Privacy & Security:

Concerns were raised regarding loss of privacy to the Living Room and the bedrooms. The swimming pool projects approximately 2.2m in front of the equivalent level building line of N^o 157A.

Environmental Services Division Report No. 41 (Cont'd)

Currently there is some screening planting, but not of sufficient height to be effective. The applicant has made submission that he and his neighbour have agreed to a privacy screen along the NE edge of the pool and creepers to be planted. It is not clear what variety is proposed and whether it would be resistant to pool water splashes. Without adequate details of the privacy screen, it is difficult to make an assessment.

Subsequently, the applicant has offered to lower the pool deck 1m and this would assist in reducing overlooking. Additionally, reducing the pool width by 1 metre from the north-western side and increasing the side setback by a further 500mm on the north-eastern side would increase the privacy, but does not address other problems with the pool height itself. It should be noted the existing deck of applicant's house at the main house level has overlooking opportunities, since the second inclinator to the waterfront is in line with one room's windows.

Access to the pool deck is not adequately detailed. The pool and deck area are elevated on a steeply sloping site and there is no direct access from the dwelling proposed. It is considered that some additional structure in the form of stairs from the dwelling, a landing platform for the inclinator, or stairs from the rear yard would be required.

Swimming Pools:

The objectives of the Residential DCP in regard to swimming pools require their location to minimise their impact on adjoining properties, buildings and people; and to be appropriately located for visual and aural privacy and not adversely impact on the streetscape.

In the performance criteria, the height limit of 1m above ground can be varied if the applicant can demonstrate the proposal would not detract from the amenity of or character of the locality and is to be appropriately screened by landscaping or other means.

The DCP requires the side setback to be equivalent to the height of the concourse above the existing ground level and appropriate landscape works are required for preservation of amenity. The proposed setback is insufficient and the adjacent rock face limits opportunities for screening planting.

In relation to the view from the waterways, very early in the assessment process, the applicants were advised it would be preferable to screen the support columns and underside of the structure with terraced sandstone retaining walls and landscape planting. Further, the pool could be narrowed; or the pool relocated under the existing deck, but these suggestions were rejected by the applicant.

The impact on the view of the foreshore from the waterway is substantial and screening planting cannot be relied upon in these circumstances. The soil cover is sparse and without further retaining walls (again, sandstone faced as used consistently in this area) it is unlikely the proposed plantings would be successful. The applicant has indicated he does not intend building any more retaining walls.

Further, the area below the proposed pool area is currently overgrown with many weeds and vines and features many rocky outcrops. The area is steep and difficult to maintain. While the current residents may be diligent in initial planting and maintaining, it is likely future residents would not be aware of landscaping requirements.

In any case, the proposed planting immediately in front of the pool structure will reach a maximum height of 3m and 1.5m, according to the documentation supplied. This is achievable in ideal rather than challenging conditions. The maximum height is in any case inadequate when the height of the pool is up to 5.2m plus required fencing. No new planting is shown in area in front of the proposed deck.

Environmental Services Division Report No. 41 (Cont'd)

The proposed pool pump and filter location is not indicated on the drawings. The proposed "seawater pump" is described as *"a portable pump kept at the house and taken by inclinor to our jetty as required. When in use, the poly-pipe will be on the NE side near the lower inclinor track."* [page 7, R Jaensch submission received 8 Mar 07].

No supporting documentation or literature has been included with the submission. It is not known how effective this system will be and how often the poly-pipe will be installed, or whether it would over time become a permanent fixture on the jetty, across the shoreline and up the hill. Additionally, the pipe is likely to be quite obvious from the waterways.

BASIX assessment has required the installation of a rainwater tank, but the applicant has rejected this without adequate explanation.

Precedent:

The applicants have stated the required 15m Foreshore setback does not apply to them because the neighbouring property has development less than 15m from the MHWM. The setback to the house of N^o 157A is greater than 15m from the closest part of the MHWM.

Referring to Clause 3.13.2(d) of the Residential DCP 2001 (Amendment 1) swimming pools may be constructed within the 15m [Foreshore] setback provided no part of the pool structure projects more than 1m above existing ground level. The pool at N^o 157A is classed as an in ground pool and thus conforms. The proposal is significantly elevated and thus does not conform.

EP&AA 1979 – section 79(c)

- (a) *the provisions of:*
- (i) *any environmental planning instrument*
 - (ii) *any draft environmental planning instrument*
 - (iii) *any development control plan*
 - (iv) *the regulations*

The proposal has been assessed having regard to the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2001, Amendment 1.

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality*

The impacts of the proposed swimming pool and deck have been considered and, will result in significant negative effects on the locality.

- (c) *the suitability of the site for the development,*

The site is within the Residential zone and is currently developed with a dwelling house. The nature of the site, its slope and the proximity to the foreshore is such the proposed swimming pool and deck is considered unsuitable development.

- (d) *any submissions made in accordance with this Act or the regulations,*

The application was notified in accordance with Council's policy with two (2) submissions received.

- (e) *the public interest.*

The proposal is not considered to be in the public interest.

Environmental Services Division Report No. 41 (Cont'd)**CONCLUSION:**

The application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988 and the Development Control Plan for the Residential Zone 2001 (Amendment 1).

In addition to the issues of building within the Foreshore Setbacks; excessive height off the pool deck; inadequate screening of the pool structure; loss of privacy to the adjoining property; and inadequate detail of the pool pumping proposal, the application is poorly documented and parts appear to be unresolved.

No deck under the existing house deck or access to the pool via the inclinor has been shown. Fencing has not been adequately detailed. Access gates to the pool enclosure and the timber deck structure have not been shown. The pool pumping system from Middle Harbour has not been explained or product specification supplied. The applicant has rejected the BASIX requirement for a rainwater tank, so no rainwater tank or pool filtration/pump location has been shown.

In view of the above and other issues raised, the application is not considered to be satisfactory and is therefore recommended for refusal.

RECOMMENDATION

That Development Application No. 524/06 for a new swimming pool and deck at 155A Seaforth Crescent, Seaforth be refused for the following reasons.

1. The proposal is considered an unsatisfactory form of development within the Foreshore and Waterways Area pursuant to Clause 25 of the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, having regard to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979.
2. The proposal will have an adverse visual impact when viewed from the waters of Powder Hulk Bay; it will visually obstruct the dramatic topography of the site when viewed from Middle Harbour; it will not provide for a high quality of built and landscape design; and it will have an adverse cumulative impact on the site and foreshore building line.
3. The proposal does not comply with setback requirements of Clause 3.13 of the Manly Development Control Plan for the Residential Zone 2001, Amendment 1, and is considered an unsatisfactory form of development within the Foreshore Scenic Protection Area pursuant to Clause 17 of the Manly Local Environmental Plan 1988 on grounds of excessive visual bulk and scale and increased cumulative visual impacts as viewed from the waterways; particularly from Middle Harbour, having regard to Section 79C(1)(a)(i) and (b) of the Environmental Planning and Assessment Act 1979.
4. The proposal is considered to degrade the amenity of the adjoining residents and the existing quality of the environment, in terms of privacy, bulk and visual impact. It is inconsistent with Clause 10, objective (d) of Zone 2 - the Residential Zone, under the Manly Local Environment Plan 1988, with the specific objectives of Section A5 (c); and Clause 3.13 of the Manly Development Control Plan for the Residential Zone 2001, Amendment 1, having regard to Section 79C(1)(a)(i) and (iii) of the Environmental Planning and Assessment Act 1979.
5. The Landscape details provided are not in accordance with Clause 3.2 of the Manly Development Control Plan for the Residential Zone 2001, Amendment 1.

Environmental Services Division Report No. 41 (Cont'd)

6. The documentation is not adequate for a comprehensive assessment of the proposal.
7. The proposal does not comply with requirements of BASIX regarding the installation of a rainwater tank and other conditions.
8. The proposal is unacceptable in view of the submissions received, pursuant to Section 79C(1)(d) of the Environmental Planning and Assessment Act 1979.
9. The proposal is not considered to be in the public interest, pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979.

ATTACHMENTS

There are no attachments for this report.

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***** End of Environmental Services Division Report No. 41 *****

TO: Land Use Management Committee - 2 July 2007
REPORT: Environmental Services Division Report No. 42
SUBJECT: Development Application Being Processed During July, 2007.
FILE NO:

SUMMARY

DEVELOPMENT APPLICATIONS CURRENTLY BEING PROCESSED DURING JULY 2007.

REPORT

Applications currently with Council's Development Assessment team for consideration of determination.

DA#	Date Rec by Council	Site Address	Proposal	Meeting Type	Target Date
297/06	10-Jul-06	25 Fairlight Crescent	3 Storey RFB Converted to Single Dwelling	Awaiting Information	
412/06	10-Aug-06	Skiff Club - East Esp	Alterations and Additions and Extension to Disabled Ramp	Awaiting Information	
404/06	27-Sep-06	Manly Council - Library	Alterations and 3rd Floor Additions	Awaiting Information	
462/06	13-Oct-06	151 Darley Road	Construction of a New Public Access Walkway at St Pats	Awaiting Information	
466/06	16-Oct-06	42 Beatty Street	Alterations and Additions	Awaiting Information	
521/06	28-Nov-06	16 Upper Gilbert St	Demolition and Construction of To Dwellings and Land Subdivision	Awaiting Information	
546/06	14-Dec-06	1 and 3 - 94 Bower Street	Alterations and Additions to RFB	Awaiting Information	
542/06	14-Dec-06	45 Ethel Street	Strata Subdivision	Awaiting Information	
552/06	18-Dec-06	21 Malvern Avenue	Alterations and Additions	Awaiting Information	
558/06	21-Dec-06	29 Victoria Parade	Demolition and New RFB	Awaiting Information	
560/06	21-Dec-06	1/129 Bower Street	Internal Alterations	DAU	05-Jul-07
567/06	22-Dec-06	3 Brighton Street	Demolition and Construct 4 townhouses	DAU	05-Jul-07
563/06	22-Dec-06	210-214 Pittwater	Alterations and Additions	DAU	03-Jul-07
16/07	19-Jan-07	61 New Street	Alterations and Additions	DAU	17-Jul-07
17/07	19-Jan-07	7 Abernethy Street	Extension of Existing Deck	DAU	12-Jul-07
18/07	22-Jan-07	11 Scales Parade	Alterations and Additions	Awaiting Information	
27/07	31-Jan-07	120 Bower Street	Demolition and New RFB	DAU	10-Jul-07
33/07	03-Feb-07	59 New Street	Demolition and New Dwelling	Awaiting Information	

Environmental Services Division Report No. 42 (Cont'd)

35/07	07-Feb-07	31 Grandview Grove	Alterations and Additions	Awaiting Information	
37/07	08-Feb-07	29 Jamieson Avenue	Demolition & New Garage & Front Fence	DAU	19-Jul-07
40/07	12-Feb-07	16 Amiens Road	Alterations and Additions	DAU	02-Jul-07
41/07	12-Feb-07	33 White Street	Alterations and Additions	DAU	05-Jul-07
348/05	16-Feb-07	28 Cliff Street	Section 96 Modification	DAU	03-Jul-07
53/07	23-Feb-07	14 Hill Street	New Onsite Vehicular Hardstand	DAU	17-Jul-07
55/07	26-Feb-07	2 Bundoon Lane	Demolition and Two New Dwellings & Land Subdivision	DAU	12-Jul-07
57/07	28-Feb-07	32 Woodland Street	Alterations and Additions & Pergola	Awaiting Information	
56/07	28-Feb-07	96 Griffiths Street	Land Subdivision to Create 2 New Lots	DAU	17-Jul-07
15/98	28-Feb-07	Skiff Club - East Esplanade	Section 96 Modification	DAU	10-Jul-07
66/07	02-Mar-07	11-27 Wentworth Street	Store Room in Existing Parking Area	DAU	26-Jul-07
68/07	06-Mar-07	6 Phillip Avenue	New Rear Deck and Stairway	DAU	19-Jul-07
64/07	12-Mar-07	40 Gurney Crescent	New Dwelling and Pool	DAU	19-Jul-07
261/06	12-Mar-07	4 Kangaroo Street	Section 96 Modification	DAU	17-Jul-07
80/07	14-Mar-07	412 Sydney Road	Alterations and Additions	DAU	31-Jul-07
78/06	14-Mar-07	2 Bower Street	Alterations & Additions	DAU	26-Jul-07
79/07	15-Mar-07	18 Boronia Lane	New Dwelling & Pool	Awaiting Information	
75/07	15-Mar-07	44 Pacific Parade	Alterations and Additions	DAU	24-Jul-07
84/07	16-Mar-07	96 Seaforth Crescent	Demolition and New Dwelling & Pool	Awaiting Information	
89/07	16-Mar-07	15-21 The Corso	Retail, Commercial, Bottle shop & Hotel Accommodation	DAU	03-Jul-07
90/07	16-Mar-07	23-27 The Corso	Alterations and Additions to Extend into Adjoining Properties	DAU	24-Jul-07
201/02	20-Mar-07	87 Bower Street	Section 96 Modification	Awaiting Information	
91/07	22-Mar-07	35 New Street	Amended Plans	DAU	19-Jul-07
92/07	26-Mar-07	38-42 The Corso	Alterations and Additions to Retail Premises	Awaiting Information	
95/07	26-Mar-07	13 Castle Circuit	New Dwelling	Awaiting Information	
94/07	26-Mar-07	120 Griffiths Street	Land Subdivision to Create 2 New Lots	DAU	26-Jul-07
359/06	28-Mar-07	1 North Harbour Street	Section 96 Modification	DAU	10-Jul-07

Environmental Services Division Report No. 42 (Cont'd)

97/07	28-Mar-07	13 Kanangra Crescent	New Dwelling and Pool	DAU	03-Jul-07
100/07	29-Mar-07	95 Castle Circuit	New Balcony and Garage	DAU	07-Aug-07
103/07	30-Mar-07	12 Rosedale Avenue	Alterations and Additions	DAU	24-Jul-07
101/07	30-Mar-07	50 Upper Clifford Avenue	Alterations and Additions	DAU	17-Jul-07
3762/90	30-Mar-07	33 White Street	Section 96 Modification	DAU	03-Jul-07
104/07	02-Apr-07	69 Boyle Street	New Deck at Rear	DAU	12-Jul-07
110/07	04-Apr-07	14 Ellery Parade	Demolition, New Dwelling and Pool	DAU	09-Aug-07
111/07	04-Apr-07	39 Lauderdale Avenue	New Balconies at Rear of RFB	DAU	05-Jul-07
108/07	04-Apr-07	31 Cutler Road	Alterations and Additions	DAU	31-Jul-07
109/07	04-Apr-07	42 Radio Avenue	Alterations and Additions	DAU	31-Jul-07
114/07	05-Apr-07	15 Scales Parade	Alterations and Additions, New Garage with Storey Under	DAU	17-Jul-07
619/01	10-Apr-07	447-449 Sydney Road	Section 96 Modification	Awaiting Information	
392/06	11-Apr-07	4 Camera Street	Amended Plans	Awaiting Information	
116/07	11-Apr-07	22 Jackson Street	Demolition, New Dwelling and Pool	DAU	02-Aug-07
555/00	13-Apr-07	28 Castle Circuit	Section 96 Modification	DAU	07-Aug-07
120/07	16-Apr-07	447-449 Sydney Road	Unit 12, Convert to Commercial Space	DAU	09-Aug-07
121/07	17-Apr-07	202 Sydney Road	Alterations and Additions to RFB	DAU	01-Sep-07
123/07	17-Apr-07	9 Adrian Place	New Dwelling & Garage	Awaiting Information	
127/07	19-Apr-07	25 Eurobin Avenue	Carport, Cabana, Storeroom, Deck and Fence	DAU	14-Aug-07
128/07	20-Apr-07	8 Coral street	New Dwelling	DAU	14-Aug-07
132/07	24-Apr-07	33 West Street	Alterations & Additions	DAU	16-Aug-07
131/07	24-Apr-07	42 Quinton Road	Alterations and Additions	DAU	19-Jul-07
137/07	27-Apr-07	10 Fisher Street	Alterations and Additions and Pool	DAU	19-Jul-07
136/07	27-Apr-07	26 Austin Street	Alterations & Additions	DAU	24-Jul-07
341/03	30-Apr-07	4 West Street	Section 96 Modification	Awaiting Information	
139/07	30-Apr-07	19 Crescent Street	Alterations & Additions	DAU	14-Aug-07
144/07	02-May-07	26 Malvern Avenue	Vehicular Hardstand and Landscaping	DAU	21-Aug-07
143/07	02-May-07	21 Seaforth Crescent	Alterations & Additions	Awaiting Information	
187/06	03-May-07	4 Carlton Street	82A Review	DAU	31-Jul-07
148/07	04-May-07	30 Wakehurst Pwky	New Dwelling	DAU	26-Jul-07
179/06	04-May-07	32 Arthur Street	Section 96 Modification	DAU	14-Aug-07
147/07	04-May-07	33A Clontarf Street	Alterations & Additions	DAU	31-Jul-07
154/07	07-May-07	78 Condamine Street	New Shed at Rear	DAU	02-Aug-07

Environmental Services Division Report No. 42 (Cont'd)

- 480/2006 472 Sydney Road, BALGOWLAH 2093
Section 96 to modify approved Alterations and Additions for the use as a child care centre in respect of boundary walls and fencing
- 334/2006 7 Dobroyd Road, BALGOWLAH HEIGHTS 2093
Section 96 to modify approved Alterations & Additions including the construction of a new first floor
- 190/2007 12 Seaforth Crescent, SEAFORTH 2092
Excavation & construction of a swimming pool, terrace surround & landscaping
- 194/2007 16 Castle Circuit, SEAFORTH 2092
Excavation and new Swimming Pool, terrace surrounds and landscaping
- 191/2007 93-95 North Steyne, MANLY 2095
Alterations & Additions to existing entry foyer (northern elevation) and enclosure of fire hydrant
- 273/2006 1 Beatty Street, BALGOWLAH 2093
Section 96 to modify approved Alterations and Additions to an existing two (2) storey Dwelling including addition of a basement double garage
- 192/2007 4 Sheridan Place, MANLY 2095
Demolish and reconstruct front automatic sliding gate and repaving of the existing paved terrace
- 193/2007 96 Kirkwood Street, SEAFORTH 2092
Alterations & Additions to an existing dwelling house, carport & deck
- 196/2007 98 West Street, BALGOWLAH 2093
Alterations & Additions to rear of existing Dwelling
- 197/2007 55 Frenchs Forest Road, SEAFORTH 2092
Alterations & Additions to an existing dwelling house and carport
- 198/2007 10 Fairlight Crescent FAIRLIGHT 2094
Alterations to Residential Flat Building including new balustrades and handrails
- 199/2007 72 Ellery Parade, SEAFORTH 2092
Alterations and additions to an existing dwelling house
- 200/2007 26 Peacock Street, SEAFORTH 2092
New Swimming pool and deck surround
- 201/2007 20 Sandy Bay Road, CLONTARF 2093
Alterations & Additions to existing dwelling house including decks
- 202/2007 22 Monash Crescent, CLONTARF 2093
Alterations & Additions to Dwelling house
- 203/2007 242 Pittwater Road, MANLY 2095
Alterations & Additions at rear of existing dwelling house
- 204/2007 69 Golf Parade, MANLY 2095
Construction of two (2) double garages

Environmental Services Division Report No. 42 (Cont'd)

205/2007 New carport with sliding gate and front fence	136 Condamine Street, BALGOWLAH 2093
157/2000 Dwelling	86 Wood Street, MANLY 2095
328/2006 Section 96 to modify approved consent to extend approved garages for two (2) double garages	8 Paris Street, BALGOWLAH 2093
206/2007 Alterations & Additions to a dwelling house	26-28 Adelaide Street, BALGOWLAH 2093
208/2007 Alterations & Additions to Dwelling house including new first floor level, demolition of garage and new carport	16 Alto Avenue, SEAFORTH 2092
209/2007 Alterations & Additions to Dwelling house including first floor level	36 Radio Avenue, BALGOWLAH 2093
210/2007 Swimming Pool	14 Bareena Drive, BALGOWLAH HEIGHTS 2093
211/2007 Alterations & Additions to Dwelling	5/161 Sydney Road, FAIRLIGHT 2094
213/2007 Swimming Pool	10 Coral Street, BALGOWLAH 2093
214/2007 Swimming Pool	31 Beatty Street, BALGOWLAH 2093
215/2007 Dwelling	1 Alma Street, CLONTARF 2093
527/2005 Section 96 Modification	147 Balgowlah Road, BALGOWLAH 2093
309/2006 Section 96 Modification	16 Eurobin Avenue, MANLY 2095
216/2007 Two Dwellings on One Lot	88 Bower Street, MANLY 2095
217/2007 Alterations & Additions to Dwelling	50 Cutler Road, CLONTARF 2093
581/2003 Section 96 application to modify approved landscape plan	86 Wood Street, MANLY 2095
53/2007 AMENDED PLANS - New onsite vehicular hard-stand & associated works	14 Hill Street, FAIRLIGHT 2094
218/2007 Pergola/Awning	59 Peacock Street, SEAFORTH 2092

Environmental Services Division Report No. 42 (Cont'd)

- 487/2004 49 Golf Parade, MANLY 2095
Dwelling and Fencing
- 508/2005 2 Castle Rock Crescent, CLONTARF 2093
Section 96 application to modify approved demolition and construction of new dwelling house and pool on lot 14A
- 105/2007 35 Baranbali Avenue, SEAFORTH 2092
Section 96 to modify approved Alterations & Additions to a single storey Dwelling extend bedroom and living room to kitchen and study to rear and construct parking bay
- 219/2007 2/68 Seaview Street, BALGOWLAH 2093
Alterations & Additions to Dwelling
- 220/2007 14 Camera Street, MANLY 2095
Demolish existing garage and construct double garage and swimming pool
- 221/2007 10 Benelong Street, SEAFORTH 2092
Alterations & Additions to Dwelling including enclosure of part of the existing verandah and relocation of the front door
- 222/2007 27 Rickard Street, BALGOWLAH 2093
Alterations & Additions to Dwelling
- 517/2006 38-40 Balgowlah Road, FAIRLIGHT 2094
Advertising Structure and Section 96 Modification

RECOMMENDATION

THAT the information be noted.

ATTACHMENTS

There are no attachments for this report.

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***** End of Environmental Services Division Report No. 42 *****

TO: Land Use Management Committee - 2 July 2007
REPORT: Environmental Services Division Report No. 43
SUBJECT: Appeals List for July 2007
FILE NO:

SUMMARY

LIST OF APPEALS RECEIVED AND THEIR CURRENT STATUS FOR COUNCILLORS INFORMATION.

REPORT

DA#	L&E Appeal Reference	House #	Address	Date Appeal Lodged	Solicitor Company	Current Status
DA538/04	10859/06	51	Wood Street, Manly	15/09/06	Pike Pike & Fenwick	Judgement reserved 25/05/07
DA314/06	11073/06	110-114	Bower Street, Manly	10/11/06	Pike Pike & Fenwick	Hearing 16-17/07/07
DA389/05	11102/06	9	Smith Street, Manly	28/11/06	Home Wilkinson Lowry	Callover 01/07/07
DA458/06	10168/07	10	Quinton Road, Manly	02/04/07	Home Wilkinson Lowry	Dismissed 14/06/07
DA64/07	10365/07	40	Gurney Crescent, Seaforth	01/05/07	Pike Pike & Fenwick	Callover 29/06/07
DA84/07	10404/07	96	Seaforth Crescent, Seaforth	16/05/07	Pike Pike & Fenwick	Callover 29/06/07
DA570/06	10420/07	85-87	Lauderdale Avenue, Fairlight	10/05/07	Home Wilkinson Lowry	Callover 19/07/07

RECOMMENDATION

That the information be noted.

ATTACHMENTS

There are no attachments for this report.

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***** End of Environmental Services Division Report No. 43 *****